COMPLIANCE COMMISSION

ANTI-MONEY LAUNDERING

COUNTER FINANCING OF TERRORIST

AND

PROLIFERATION FINANCING

AML/CFT/PF

COMPLIANCE OBLIGATIONS

TRAINING

For

ATTORNEYS AT LAW

THURSDAY 28TH MARCH, 2019

COMPLIANCE COMMISSION

What is Compliance and AML?

Financial institutions (FIs) and designated non-financial business and professions (DNFBPs) must comply with the Financial Transaction Reporting Act 2018 (FTRA), Anti-Terrorism Act 2018 (ATA), the Proceeds of Crime Act 2018 (POCA) and its implemented regulations. The purpose of the AML/CFT rules is to help detect and report suspicious activity including the predicate offenses to money laundering and terrorist financing and to prevent manipulation of the financial sector.

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Who is responsible for the AML/CFT compliance policy?

The Compliance Officer may be an employee who has other duties in law firms, but it should be someone in a responsible position. The Compliance Officer is responsible for the business's day-to-day compliance with the AML laws and regulations, and for ensuring the Compliance Program is updated as needed. However, compliance and its culture ultimately lies with the Board of directors and senior management.

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These are the areas that must be implemented and updated regularly when required to do so to ensure that law firms has in place a robust AML/CFT compliance program:

1. Conducting of risk assessment;
2. Customer due diligence;
3. Record keeping;
4. Internal controls;
5. Suspicious transactions;
6. AML/CFT staff training.

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CONDUCTING OF RISK ASSESSMENT

Every law firm shall:

- take appropriate measures to identify, assess and understand its identified risks in relation to—
  its facility holders and the countries or jurisdictions of their origin;
  the countries or jurisdictions of its operations; and
  its products, services, transactions and delivery channels;

- develop and implement a comprehensive risk management system approved by senior management.
- take appropriate measures to manage and mitigate those risks.
- take account of any risk assessment carried out at a national level and any regulatory guidance issued by its Supervisory Authority; and
- upon request, provide the Supervisory Authority with a copy of its risk assessment.

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CONDUCTING OF RISK ASSESSMENT

A risk assessment should be carried out :-

- prior to the launch of a new product or business practice;
- prior to the use of new or developing technologies;

The assessment is to identify and assess the identified risks that may arise in relation to such products, business practices or technology for both new and pre-existing products and such assessment shall take into account the facility holder's geographic area, product, service, transaction and means of delivery risk factors.

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CUSTOMER DUE DILIGENCE

Law firms shall undertake customer due diligence measures when opening an account for or otherwise establishing a business relationship with a facility holder. Where:

- doubts exist about the veracity or adequacy of previously obtained identification information of a facility holder,
- there is a suspicion of activities relating to identified risks involving the facility holder or the facility holder's account;
- a person, who is neither a facility holder nor in an established business relationship with the law firm, wishes to carry out a transaction (referred to as an "occasional transaction");
- it is determined that an occasional transaction is being conducted on behalf of another person,
- sections 7 – 9, 13 and 14 of the FTRA 2018 shall apply.

Ensure that these requirements are met with respect to facility holders and beneficial owners with which the law firm has a business relationship and such measures shall be applied at appropriate times and on the basis of materiality and risk, depending on the type and nature of the facility holder, the business relationship, products or transactions. A law firm shall not establish or maintain an anonymous account or an account in a fictitious name. Unless there is a suspicion of identified risks (in which case the full range of customer due diligence measures must be applied without regard to any monetary threshold).

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Due diligence measures

In fulfilling the obligations imposed by subsection (1) of section 6 of the FTRA 2018, all law firms shall—

- identify the identity of a facility holder by means of verifying reliable, independent source documents, data or information;
- identify and verify the identity of any person purporting to act on behalf of the facility holder, and verify that such person is properly authorized to act in that capacity;
- understand, and as appropriate, obtain information on the purpose and intended nature of the business relationship, including the ownership and control structure of the facility holder.

In addition to the above, every law firm shall identify and verify the beneficial owner(s) of a facility.

When applying customer due diligence measures, a law firm shall take into account the outcome of the risk assessment required to be conducted pursuant to section 5 of the FTRA 2018 with respect to each facility holder and business relationship.

COMPLIANCE COMMISSION

Due diligence measures

Where the risks identified are low, the law firm shall conduct simplified due diligence measures unless there is a suspicion of activities related to any identified risk in which case enhanced customer due diligence measures shall be undertaken.

In the case of a trust, a law firm shall identify:

the settlor, the trustees, the protector (if any) and any other natural person or persons exercising effective control over the trust; and

the beneficiaries or class of beneficiaries, so that the law firm is reasonably assured that it will be able to establish the identity of the beneficiary at the time of payout or when the beneficiary intends to exercise his vested rights.

other regulated agents of, and service providers to, the trust, including the identity of any person purporting to act as a manager, accountant, an vestment advisor or tax advisor.

If a law firm forms a suspicion that a transaction relates to an identified risk, the law firm shall take into account the risk of tipping-off when performing the customer due diligence measures.

Where the firm reasonably believes that performing the customer due diligence measures will tip-off the facility holder or potential facility holder; it may choose not to pursue those measures, and shall file a suspicious transaction report.

COMPLIANCE COMMISSION

Identification and Verification

Every law firm shall undertake identification and verification measures before opening an account or establishing a business relationship.

Where in relation to an existing business relationship or facility:

> any identified risk activity under the Proceeds of Crime Act, 2018 is suspected; or
> doubts exist about the veracity or adequacy of previously obtained identification information of the facility holder,

identification and verification measures shall be completed before the facility holder may conduct any further business.

The relevant Supervisory Authority may prescribe the circumstances in which verification of the identity of the facility holder and beneficial owner identity may be completed as soon as reasonably practicable after the establishment of the business relationship, provided that:

> the law firm effectively manages the risks of activities related to any identified risk; and
> a delay in verification is essential not to interrupt the normal conduct of the business.

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Reliance on customer due diligence by third party

A law firm may rely on a third-party to undertake customer due diligence measures as required by section 6(3) of the FTRA 2018, except:

where the third party is suspected of breach of the identified risk framework as defined; or

where the relevant facility holder has committed any offence designated as an identified risk.

Law firms relying on the third party shall:

immediately obtain the necessary information required under section 6(3) of the FTRA 2018 from the third party, including the identity of each facility holder and beneficial owner;

take adequate steps to satisfy itself that the third party—

will upon request, provide without delay copies of identification information and other relevant documents relating to customer due diligence requirements; and

is subject to AML/CFT obligations, is under supervision for compliance with FTRA obligations and it has adequate procedures for compliance with customer due diligence

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Inability to fulfil customer identification obligations

Law firms that cannot fulfil the requirements of sections 5 through 9 and 14 of the FTRA 2018 shall:

- not open the account or establish the business relationship;
- not carry out the transaction;
- terminate the business relationship; and
- consider filing a suspicious transaction report in accordance with the FTRA 2018.

Any law firm that:

- intentionally opens an account or establishes a business relationship;
- carries out a transaction;
- fails to terminate a business relationship;

having failed to fulfil the requirements of sections 5 through 9 and 14 of the FTRA 2018, commits an offence and is liable upon summary conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term of two years or both or in the case of a legal person to a fine not exceeding one million dollars.

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On-going due diligence

Law firms shall exercise risk based on-going due diligence throughout the course of each business relationship, which shall include:

ensuring that documents, data, information and records collected under the customer due diligence process are kept updated and relevant, and undertaking regular reviews of existing records, particularly for higher risk facility holders;

scrutinizing transactions to ensure that the transactions are consistent with the law firm's knowledge of the customer, the facility holder's risk profile and, where necessary, the source of funds;

ensuring the obligations with regard to high risk facility holders, politically exposed persons, and correspondent relationships are fulfilled at all times.

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Enhanced customer due diligence

Law firms shall apply enhanced customer due diligence measures to a business relationship or transaction with a facility holder, beneficial owner or financial institution from a jurisdiction assessed by the IRF Steering Committee and such enhanced measures shall be effective and proportionate to the risks identified.

The firm shall:

- *examine as far as possible the background and purpose of all complex, unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose;*

- *take such measures as may be prescribed from time to time, to counter the risks identified with respect to facility holders, beneficial owners or entities assessed as high risk.*

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Risk assessment of politically exposed persons

Law firms shall have in place appropriate risk management systems to determine whether a facility holder or beneficial owner is a politically exposed person and shall:

- prior to establishing or continuing a business relationship with such facility holder or beneficial owner, obtain the approval of senior management of your firm;
- take reasonable measures to identify the source of wealth and source of funds of the facility holder;
- conduct enhanced on-going monitoring of the business relationship.

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RECORD KEEPING

Law firms shall maintain all books and records with respect to their facility holders and transactions and the firms shall ensure that such records and supporting information are available on a timely basis when required to be disclosed by law.

The books and records referred to above shall include, as a minimum:

- records obtained through customer due diligence measures, including account files, business correspondence, and copies of all documents evidencing the identity of facility holders and beneficial owners, and the results of any analysis undertaken in accordance with the provisions of the FTRA 2018, all of which shall be maintained for not less than five years after the business relationship has ended;
- records of transactions, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be maintained for not less than five years from the date of the transaction; and
- records of any findings pursuant to section 11(1)(a) of the FTRA 2018 and related transaction information which shall be maintained for at least five years from the date of the transaction.

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How records are to be kept

Records required to be kept under section 15 of the FTRA 2018 by a law firm shall be kept in written form in the English language, or in a form readily accessible and convertible in written form in the English language.

Mandatory destruction of records

Law firms shall ensure that:

every record retained by the firm pursuant to any provision of record keeping procedures of the FTRA 2018 ; and

every copy of any such record, is destroyed as soon as practicable after the expiry of the period for which the firm is required, by any provision of the record keeping procedures of the FTRA 2018, to retain that record.

See further record keeping requirements under the FTRA 2018

COMPLIANCE COMMISSION

INTERNAL CONTROLS

Financial institution to develop procedures

Law firms shall develop and implement procedures for the prevention of activities related to identified risks.
The procedures referred shall be:

- approved by senior management and be monitored and enhanced, as necessary; and
- appropriate to the risks identified under section 5 of the FTRA 2018 or by the IRF Steering Committee;
- proportionate to the nature and size of the financial institution's business, but should at a minimum include-

internal policies, procedures and controls to fulfil the obligations pursuant to the FTRA;

adequate screening procedures to ensure appropriate and high standards when hiring employees;

on-going training for all **statutory** directors, officers and employees to maintain awareness of the laws and regulations relating to identified risks, to assist in recognizing transactions and actions that may be linked to identified risks and instruct them in the procedures to be followed in such cases; and

independent audit arrangements to review and verify compliance with and effectiveness of the measures taken in accordance with the FTRA.

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INTERNAL CONTROLS

Designation of compliance officers

Law firms shall designate a compliance officer at senior management level to be responsible for the implementation of and ongoing maintenance of the internal procedures and controls of the firm in accordance with the requirements of the FTRA 2018.

The compliance officer shall, on demand, have unrestricted access to all books, records and employees of the firm as may be necessary to fulfil their responsibilities.

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SUSPICIOUS TRANSACTIONS

Financial institutions to report suspicious transactions

Notwithstanding any other law, where:

- any person conducts or seeks to conduct any transaction by, through or with a law firm (whether or not the transaction or propose transaction involves cash); and

- the firm knows, suspects or has reasonable grounds to suspect that the transaction or proposed transaction—
    * involves the proceeds of criminal conduct as defined Proceeds of Crime Act;
    * is related to an offence under the Proceeds of Crime Act;
    * is an attempt to avoid the enforcement of any provision of the Proceeds of Crime Act; or
    * is an identified risk,

the firm shall, as soon as practicable after forming that suspicion, report the transaction or proposed transaction to the Financial Intelligence Unit.

See further reporting requirements under the FTRA and POCA 2018 In regards to the form of reporting, protection, auditors to report, confidentiality and tipping off.

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TRAINING PROCEDURES

Pursuant to the Financial Intelligence Transaction Reporting Regulations 6 (FI(TR)R) a law firm shall take appropriate measures from time to time for the purposes of making all relevant employees aware —

(a). of the provisions of the FIUA, FTRA, FCSPA, POCA, these regulations and any other statutory provision relating to money laundering; and

(b). of the procedures maintained by the institution in compliance with the duties imposed under these regulations.

A law firm shall provide all relevant employees from time to time and in any case at least once per year with appropriate training in the recognition and handling of transactions carried out by or on behalf of any person who is, or appears to be, engaged in money laundering.

Training under this regulation shall in addition be given to all new relevant employees as soon as practicable after their appointment.

For the purpose of this regulation, an employee is a relevant employee if, at any time in the course of his/her duties, he/she has, or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering.

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STAFF RECRUITMENT, EDUCATION AND TRAINING PROCEDURES

KNOW YOUR EMPLOYEE (KYE) PROCEDURES

The financial services industry in The Bahamas, as in any other jurisdiction, is challenged with managing a diverse range of risks such as reputational, legal, operational etc. Consequently, in addition to law firms implementing proper procedures to mitigate risk from external forces, attention should also be placed on potential risks posed to the firm from internal forces such as from their employees. Appropriate procedures, including those for screening, should be implemented and documented for the hiring of employees. In this regard, the Commission offers some guidance to its registrant law firms which may be useful in managing the related risks.

See the recent revised issued Codes of Practice for guidance

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STAFF RECRUITMENT, EDUCATION AND TRAINING PROCEDURES

STAFF AWARENESS PROGRAMMES

Law firms must take appropriate measures to familiarize all of their employees with:

- policies and procedures designed to detect and prevent money laundering including those for identification, record keeping and internal reporting, and any legal requirements in respect thereof; and
- training programmes which incorporates the recognition and handling of suspicious transactions.

Staff must be aware of their own personal AML statutory obligations including the fact that they can be personally liable for failure to report information in accordance with internal procedures. All staff should be encouraged to co-operate fully and to provide a prompt report of any suspicious transactions without fear of reprisal.

It is important that all law firms covered by the Compliance Commission Codes of Practice, introduce adequate measures to ensure that staff members are fully aware of their responsibilities. To strengthen the firm's position, the Commission strongly recommends that employees are requested to sign a confirmation document to indicate that they have read the Codes of Practice and any other requisite manual that the employee is expected to be familiar with.

See the recent revised issued Codes of Practice for more guidance.

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THANK YOU FOR YOUR ATTENTION

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