

Legislative Updates on Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT)

PRESENTED BY THE COMPLIANCE COMMISSION OF THE BAHAMAS

New AML/CFT Legislation in 2018

Financial Transactions Reporting Act 2018 (FTRA);

Financial Transactions Reporting Regulations 2018 (FTRR);

Financial Transactions Reporting (Wire Transfer Regulations) 2018;

Proceeds of Crime Act 2018 (POCA); and

Anti-Terrorism Act 2018 (ATA).

Key Additions under the FTRA

The definition for Designated Non Financial Business and Profession (DNFBP)

FTRA 2018	FTRA 2000
<p>Section 4(e)</p> <p>“A counsel and attorney or accountant when they engage in, or carry out transactions for a client concerning —</p> <ul style="list-style-type: none">(i) The buying or selling of real estate;(ii) A deposit or investment of cash;(iii) The management of client funds or securities;(iv) The management of bank, savings or securities accounts;(v) The organization of contributions for the creation, operation or management of a legal person;(vi) The creation, incorporation, operation or management of a legal person or legal arrangement, and buying and selling of a business entity;(vii) The provision of a registered office or acting as a registered agent;(viii) The acting as or arranging for another person to act as, a nominee shareholder for another person.”	<p>Section 3(1)(k)</p> <p>“A counsel and attorney, but only to the extent that the counsel and attorney receives funds in the course of that person’s business otherwise than as part of services rendered pursuant to a financial and corporate service provider's licence —</p> <ul style="list-style-type: none">(i) For the purposes of deposit or investment;(ii) For the purpose of settling real estate transactions; or(iii) To be held in a client account.”

Key Additions under the FTRA

Registering with the Compliance Commission

- Section 33(1) – “Every financial institution within the definition of section 32(2) shall register with the Commission in the form provided by the Commission.”

Penalty for Failure to Register with the Compliance Commission

- Section 33(2) – “Every financial institution referred to under subsection (1)
 - (a) established before the coming into force of this Act which fails to register with the Commission within one month of the coming into force of this Act; or
 - (b) established after the coming into force of this Act, which fails to register within one month of commencement of businesscommits an offence and is liable to a penalty of five thousand dollars for each day that the financial institution remains unregistered.”

Key Additions under the FTRA

Notifying the CC of a change in the registered office or principal place of business or change in beneficial ownership, director, partner, compliance officer or money laundering reporting officer

- Section 33(3) – “When a financial institution within the definition of section 32(2)
 - (a) has a change in registered office or principal place of business;
 - (b) has a change in beneficial ownership, director, partner, compliance officer or money laundering reporting officerthe financial institution shall within three months of such change, notify the Commission.”

Penalty for Failure to Notify the CC of change

- Section 33(4) – “Where a financial institution fails to notify the Commission as required under subsection (3), the financial institution commits an offence and is liable to a penalty of five thousand dollars for each failure to notify in accordance with subsection (3).”

Key Additions under the FTRA

Additional Sanctions

- Section 52 – “A financial institution convicted of an offence in sections 47 to 51 —
 - (a) is subject, in addition to the penalties set out therein, to the sanctions and measures available to the competent supervisory, regulatory or disciplinary authority for administrative violations;
 - (b) may also be banned for such period as the Court, before whom the financial institution is convicted, thinks appropriate in all the circumstances, from pursuing the business or profession which provided the opportunity for the offence to be committed.”

Key Additions under the FTRA

Administrative Penalties

- Section 57(1) – “Notwithstanding any penalties that may be imposed under this Act, any —
 - (a) Financial institution that fails to comply with any provision of this Act;
 - (b) Employee, director or senior manager of a financial institution who knowingly concurs in a failure to comply with any provision of this Actmay be subject to an administrative penalty imposed by the Supervisory Authority with responsibility for regulating that financial institution and —
 - (i) in the case of a company, to a maximum penalty of two hundred thousand dollars;
 - (ii) in the case of an employee, director or a senior manager of a financial institution, to a maximum penalty of fifty thousand dollars.”
- This policy came into effect on February 6th, 2019 and applies to all constituents of the Commission.

Key Additions under the POCA

Failure To Disclose - Section 12(1)(a)(b) & (2) – This applies to a person engaged in accountancy or legal services concerning the buying or selling of real property and business, the management of client money, bank savings, or the creation of trusts.

Three things must be satisfied to commit this offence.

1. First, the person must know or suspect or reasonably ought to have known or suspected that another person is engaged in money laundering or committing an offence related to an identified risk.
2. Second, the information on which his knowledge or suspicion is based or which gives reasonable grounds for such knowledge or suspicion came to him in the course of business.
3. Third, that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

Key Additions under the POCA

Penalty for Failure to Disclose – Section 15 (2) – A person who commits this offence is liable

a) On summary conviction, to imprisonment for a term not exceeding 12 years or to a fine not exceeding \$500,000 or both

b) On conviction on indictment to imprisonment for a term not exceeding 20 years or to a fine or to both

Key Additions under the ATA

Financing of Proliferation of Weapons of Mass Destruction - Section 9(1)

- It is an offence for any person who provides financial services or makes such services available to persons or attempts to do so whether by means that are direct or indirect, unlawful and willful with the intention or knowledge that the funds or services are to be used in full or in part
 - (a) to manufacture, develop or produce or participate in the development or production of a nuclear, biological or chemical weapon for use in terrorists acts;
 - (b) to distribute, or supply a nuclear, biological or chemical weapon to carry out a terrorist act;
 - (c) to train groups of persons to develop or produce or participate in the development of a nuclear, biological or chemical weapon for use by a terrorist or terrorist organization;
 - (d) conducts and constitutes an offence under the Treaties listed in the Schedule;
 - (e) to carry out any other act to intimidate the public or compel the government to do or refrain from doing an act or it is intended to cause death or serious bodily harm or any damage.

Key Additions under the ATA

Penalties for Financing of Proliferation of Weapons of Mass Destruction – Sections 9(4) & (5)

- A person, or director or person in charge of a legal entity is liable on conviction on indictment to a fine of up to twenty-five million dollars and to imprisonment for twenty-five years.
- Where a body corporate or its director, manager or other similar officer is convicted, the Court shall have the power to
 - (a) revoke business licenses;
 - (b) order that the body corporate be wound up;
 - (c) forfeit the assets and properties of the body corporate to the Confiscated Assets Fund; and
 - (d) prohibit the body corporate from performing any further activities.

Key Additions under the ATA

Part IV – Implementation of United Nations Security Council Resolutions

Special Provisions for Designated Entities – Section 43(1) & (2)

- Designated Entities refers to individuals or entities and their associates designated as terrorist entities by the Security Council of the United Nations.
- The National Identified Risk Framework Coordinator shall be responsible for maintaining a list of designated entities as provided by the UN; ensuring that the list remains current; circulating the list without delay upon receipt to financial institutions; requesting information on whether any designated entity on the list has funds in The Bahamas; and maintaining a consolidated list of all orders issued by the court and circulating the same to all financial institutions.

Key Additions under the ATA

Procedure for Designated Entities - Section 44(a) & (b)

- When a financial institution receives the list of designated entities referred to in section 43(2)(a) or (d) it shall
 - (i) freeze all funds held by it in the name of a designated entity;
 - (ii) inform the Attorney general and FIU that a designated entity has funds with the financial institution; and
 - (iii) inform the designated entity that the funds have been frozen.
- Fourteen (14) days after the designated entity has been informed that the funds held at the financial institution have been frozen, the designated entity may commence proceedings in the Supreme Court for an Order to release the funds.

Key Additions under the ATA

➤ **Reporting Requirements** - Section 49(1)

- It is an offence for a financial institution to know or have reasonable grounds to suspect that any funds maintained on its books are by any individual entity or legal entity who

(a) commits terrorist acts or participates in or facilitates the commission of terrorists acts or the financing of terrorism;

(b) is a designated entity;

(c) is a listed entity

and the financial institution fails to report the existence of such funds to the Financial Intelligence Unit.

➤ **Penalty for Failure to Report**

- Section 49(3) – “A financial institution which fails to comply commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty thousand dollars (\$250,000).”

Key Additions under the ATA

➤ **Duty to Disclose Information relating to Offences and Terrorist Acts - Section 69 (1)**

- It is an offence for any financial institution who has any information which will assist in

- a) preventing the commission by another person, of a terrorist act; or

- b) securing the arrest or prosecution of another person for an offence under the ATA and

fails to disclose the information to the Commissioner of Police or the Director of Public Prosecutions.

➤ **Penalty for Failure to Disclose**

- Section 69(4) – “Any person who fails to comply commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars (\$10,000) and to imprisonment for two (2) years.”

United Nations Security Council Resolutions in 2018

International Obligations (Economic & Ancillary Measures) (Implementation of United Nations Security Council Resolutions) (Iraq) Order, 2018; and

International Obligations (Economic & Ancillary Measures) (Implementation of United Nations Security Council Resolutions) (Afghanistan) Order, 2018.

Key Sections under the Iraq Order

Strict Compliance – Section 25

- Every individual or entity shall file an annual declaration, signed by at least two directors of its Board of Directors or its compliance officers certifying that the operations of such individual or entity are in compliance with the provisions the Order. This declaration should be filed with the respective regulator by the 31st day of December each year.

Key Sections under the Afghanistan Order

Strict Compliance – Section 25

- Every individual or entity shall file an annual declaration, signed by at least two directors of its Board of Directors or its compliance officers certifying that the operations of such individual or entity are in compliance with the provisions the Order. This declaration should be filed with the respective regulator by the 31st day of December each year.

Enforcement for Non-Compliance with Sections of the FTRA and POCA

□ Section 57 (5)

1. The CC will issue a written warning to the financial institution warning of the:
 - a. The nature of the contravention committed;
 - b. The amount of the penalty; and
 - c. A reasonable period (no less than 28 days from the date of the notice) within which the financial institution may make representation to the CC regarding the contravention.)

Enforcement for Non-Compliance with Sections of the FTRA and POCA

2.If the reasonable period elapses and the financial institution does not remedy the contravention, the CC will issue a notice of its decision.

The decision will be:

- a.In writing;
- b.The CC will give its reason for the decision; and
- c.Give an indication of any right to have the matter appealed provided under any law governing the financial institution and the procedure for appeal.

THANK YOU FOR YOUR TIME