

AML/CFT Training for the Legal Profession

Date: March 28th, 2019

Topic: Regulator Update & AML/CFT Policies & Procedures



Compliance Commission of the Bahamas

Functions of the Compliance Commission

- To ensure compliance with the provisions of the FTRA.
- Conduct on-site examinations of the business of the financial institution to ensure compliance with the provisions of the Act.
- Issue Codes of Practice to provide guidance etc.
- Obligations imposed by the Codes are enforceable in accordance with regulation 8 of the Financial Intelligence (Transactions Reporting) (Amendment) Regulations 2000 (FI(TR)R).
- Where the Commission is unable to conduct such examination, to appoint an auditor at the expense of the financial institution and to report thereon to the Commission.

Compliance Commission's Legislative Authority

- Require the financial institution to produce for examination records required to be kept pursuant to sections 15- records obtained through CDD measures including documents evidencing the identity of facility holders, beneficial owners and records of transactions.
- Requires financial institution to supply information/explanation as the Commission may reasonably require for the purpose of enabling the Commission to perform its functions.
- Any person failing or refusing to produce any record or to supply any information/explanation is guilty of an offence.
- Persons can be liable on summary conviction to a fine not exceeding fifty thousand or imprisonment for a term not exceeding three years or to both fine and imprisonment.
- The CC has issued a policy on Administrative penalties for registrants of the Compliance Commission under the FTRA 2018 effective February 6, 2019.

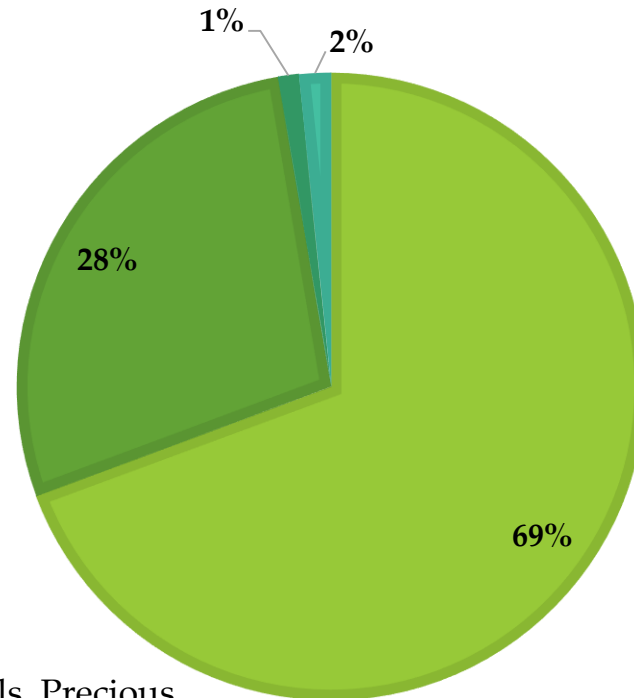
Obligations of The Compliance Commission

- The Compliance Commission is responsible for ensuring financial institutions/Designated Non-Financial Businesses and Professions (DNFBPs) under its supervision comply with AML/CFT laws, regulations and guidelines through a combination of:
 - ✓ Registration
 - ✓ On-site and off-site examination
 - ✓ A risk-based approach to AML/CFT inspections
 - ✓ Education
 - ✓ Training, awareness and directives
 - ✓ Notices and guidelines when necessary

Compliance Commission's Registrants

REGISTRANTS

■ Legal Professions ■ Real Estate Brokers & Land Developers ■ Accountant ■ Designated Government Agencies



Total number of firms=186

*Dealers in Precious Metals, Precious Stones & Pawn Brokers (In the Pipeline)

Bahamian AML/CFT Legislation

Requires Financial Institutions :

AML/CFT preventative measures and how do we protect the sector from abuse.

- Conduct and document a risk assessment of the business' products, services and operations to determine its level of exposure to the risks of money laundering, terrorist financing and other identified risks.
- Establish written risk-based AML/CFT policies and procedures approved by senior management that comply with the provisions of AML/CFT laws and guidelines.
- Appoint a Money Laundering Reporting Officer (MLRO) and a Compliance Officer(CO)
- Identify and verify customers, beneficial owners, PEPs and their source of funds. Apply enhanced CDD on high risk clients.
- Keep transaction, identification and verification records.
- Conduct on-going monitoring of customer transactions.
- Report suspicious transactions of money laundering and terrorist financing to the FIU, the police and other relevant agencies.
- Ensure the management and appropriate staff receive AML/CTF training annually.
- Conduct internal AML/CFT compliance reviews of its operations at least once per year.
- Submit to AML/CFT risk-based examination by the Commission and its appointed agents.
- Comply with provisions of the ATA 2018, POCA 2018, screen clients against UN sanctions list related to terrorist financing and proliferation financing, freeze any related funds, report to the FIU and relevant competent authorities.

Policies & Procedures

Policies and Procedures form an essential part of an AML/CFT compliance program addressing key issues such as risk appetite and must be designed to achieve compliance with AML/CFT legislation and guidelines.

FATF Rec. 1.1 states that FIs and DNFBPs should be required to:

- (a) have policies and procedures, which are approved by senior management, to enable them to manage and mitigate the risks that have been identified (either by the country or by the financial institution or DNFBP);
- (b) monitor the implementation of those controls and to enhance them if necessary; and
- (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

Written and should be in a form/format to ensure that it is accessible to relevant staff and the Supervisory Authority.

Kept up-to-date. Several factors could trigger the need to update the P&P, such as changes in legislation, non-compliance issues, new services or products, or deficiencies identified in the firm's internal compliance review - these factors are critical to ensuring that your KYC/KYE remains on trend.

Senior management must approve the document by stating approval and assigning signature and date to the document.

The Supervisory Authority expects the written P&P document to outline the obligations applicable to the relevant business under the AML legislation and associated Regulations and the corresponding process and controls the firm has in place including stating when obligations are triggered, the information that must be documented and retained, the procedures created by the firm to fulfill the required obligations and the timeliness associated with the obligations and methods of reporting. The P&P document also helps demonstrate your commitment to prevent, detect and address non-compliance.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

- Risks assessment activities including the risk mitigation measures used.

A risk assessment is an analysis of potential risks and vulnerabilities that could expose a business to ML/TF activities. This assessment must identify the business inherent risk and develop the appropriate measures to mitigate and manage these risks. Enhanced measures must be developed for high risk clients, products and services e.g. additional information on the source of funds and source of wealth of the customer, additional information about occupation, beneficial owners, nature of business, domicile verification visits, banking references, approval of senior management to establish relationship, explanations of changes in account activity and enhanced monitoring levels and thresholds.

The risk assessment must be reviewed and updated when there is any material change to the business, service offerings or technology or delivery mechanisms, or client base or when deficiencies in the effectiveness of the risk assessment have been identified. Examples of triggers for an updating of the risk assessment include: when a National Risk Assessment is published, a sector risk assessment is published by the supervisory authority, a change in legislation or an international ML/TF - related event.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

The risk assessment should be documented and demonstrate to the Supervisory Authority that you have identified, assessed and addressed the ML/TF risks related to customers, countries or geographic areas, products, services, transactions and delivery channels.

Each business has unique circumstances that determine their exposure to ML/TF risks, which need to be understood and factored into their unique AML/CFT program.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

- A documented ongoing compliance training program for relevant staff on what are the firm's AML/CFT obligations, how to implement the P&P and measures to ensure high standards before hiring.

The training program must be reviewed and kept up to date and include ML/TF methods, vulnerabilities and trends related to the business and profession, ML/TF concepts, laws, regulations, internal controls, how the Policies & Procedure document prevents and detects ML/TF including reporting suspicious activities or transactions or large cash transactions. In addition, the recognition and handling of suspicious transactions, client identification, KYC, and record keeping obligations.

All relevant staff authorized to act on the business behalf who deal with clients and/or transactions must be trained in relation to their duties and understand how the business and profession could be vulnerable to ML/TF activities.

Members of staff who are dealing directly with the public are the first point of contact with potential money launderers and their efforts are therefore vital to the organization's reporting system for such transactions.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

A higher level of instruction covering all aspects of money laundering procedures should be provided to those with the responsibility for supervising or managing staff. This will include the offences and penalties arising from the relevant AML/CFT legislation for non-reporting and for assisting money launderers.

Whenever staff members attend AML/CFT training the type of training and attendees must be documented. Training must be conducted for new employees during the on-boarding program and at least once a year for all employees - required by law. Staff members should sign a confirmation document to indicate that they have read the training manual that they are expected to be familiar with.

The screening process for hiring new employees should seek to ensure that employees do not perform any function that causes harm in relation to the execution of their function for the firm. To this end, the firm's screening process, for the employees, must allow the firm to be comfortable with the employee's: personal character (honesty, integrity and reputation)

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

competence (able to effectively execute the functions of the position) qualifications (the required experience, knowledge and training) The screening process should include, but is not limited to: background and employment historical checks; police record; reference checks, including character and financial references (or equivalent) and Qualification verification (as applicable, e.g. degrees, certifications).

For all employees, continued monitoring is encouraged to ensure they remain fit for employment. Employers should consider monitoring employees who are suspected of being linked to: unusual transaction activities; unusual increases in business activities; and persons known to be involved in illegal activities or associated with individuals of known questionable character.

The most effective KYE program should be complemented by a sound on-going training program which includes staff awareness.

Training is a key pillar of the compliance program and the training content, coverage and frequency should reflect the knowledge required.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

- An internal compliance review which assesses the adequacy and effectiveness of the compliance program including the P&P, risk assessment and ongoing training programs. In addition, examples of what could be included in the review; the procedures for record keeping & suspicious transaction reporting, taking samples of clients to determine if the enhanced mitigation methods for high-risk clients were taken, if the risk assessment for a sample of clients was applied correctly, the frequency of ongoing monitoring is adequate, and if the written AML/CFT P&P is meeting the obligations of AML/CFT legislation and guidelines including any updates and amendments.

Interviews with those handling transactions to evaluate their knowledge of your policies and procedures and related record keeping, client identification and reporting obligations. In addition, a sample of large cash transactions followed by a review that the relevant procedures were applied, and a sample of account opening records followed by a review of the procedures.

The internal compliance review must address whether the policies and procedures, risk assessment and training program are effective and whether practices comply with legislative and regulatory requirements.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

We recommend that businesses should conduct an internal compliance review at least once a year. The findings of the review must be documented, and the cause of deficiencies identified recorded. The internal compliance review and any updates and deficiencies must be submitted to senior management and available for review by the Supervisory Authority.

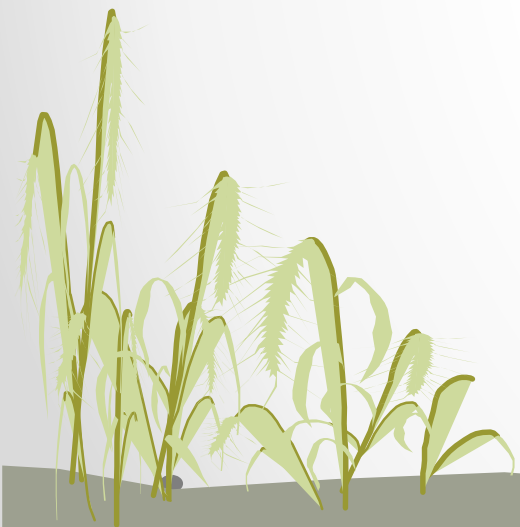
The Policies & Procedures (P&P) should at a minimum cover the following requirements:

- Know your Client (KYC) procedures and other requirements such as verifying client identity, PEPs, family members & associates, heads of international organizations, beneficial ownership, third party determination. Proper KYC is one of the best methods to prevent ML/TF risks.
- Transactions, Verification and Record-keeping Procedures - state obligation to keep transaction, identification and verification records and the information and documents that would be kept, as required by law. State what records would be kept, format and for how long as required by law.
- In addition, the procedures for relying on third parties to conduct CDD - the business remain responsible for ensuring that the required CDD is conducted in accordance with the relevant AML/CFT Act.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

- The procedure for ongoing monitoring of customer transactions and any special measures implemented based on the risk assessment. For example, taking enhanced measures to verify the identify or confirm the existence of high- risk clients, enhanced measures to keep client information up-to-date, enhanced measures to keep beneficial ownership up-to-date and taking any other enhanced measures to mitigate the risks identified.

This should be undertaken during the client onboarding process and on an ongoing basis



The Policies & Procedures (P&P) should at a minimum cover the following requirements:

- The firm must document the procedure for handling ministerial directives and transaction restrictions which are targeted measures issued by the relevant Competent Authority to protect the countries financial system from being used for ML/TF purposes. This would include compliance with United Nations Security Council Resolutions and requirements for FIs to cross-check and apply a risk-based approach to determine whether any customer or beneficiary appears on any designated list issued in compliance with any designated list on targeted financial sanctions related to terrorism, terrorist financing and proliferation of weapons of mass destruction and its financing and report this information to the Competent Authority as per the applicable legislation.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

- Document the procedure for applying enhance due diligence measures to business relationships and transactions with natural and legal persons and FIs from countries which FATF stipulates as high-risk countries. The type of enhance due diligence applied should be effective and proportionate to the risks. (Information regarding advice and concerns about weaknesses in the AML systems of other countries may be obtained from the FATF website www.fatf-gafi.org/)

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

- Define and state the functions of the MLRO and the Compliance Officer and responsibilities of management and staff as appropriate.

The Compliance Officer is responsible for effectively implementing all of the elements within the compliance program - Policies & Procedures, ongoing training, risk assessment and the internal compliance review. The Compliance Officer needs to have the necessary authority, knowledge and access to resources in order to implement an effective compliance program. In the Bahamas, DNFBP's are required to appoint a Money Laundering Reporting Officer (MLRO) as a point of contact with the Financial Intelligence Unit(FIU), to handle reports of money laundering suspicions by their staff. The person appointed as the MLRO has a significant responsibility to the firm and should be sufficiently senior to exercise the necessary authority, competent and familiar with statute laws governing the business.

The Policies & Procedures (P&P) should at a minimum cover the following requirements:

The size and nature of the firm should be a determining factor in selecting the individual to hold the position. Larger businesses may choose to appoint, as appropriate to the circumstances, a senior member of their compliance department. In small firms, it may be appropriate to designate the sole practitioner or one of the partners. When several subsidiaries operate closely together within a group, designating a single MLRO at group level is an option. The MLRO should exercise independence when determining whether the information or other matters contained in the transaction report he/she has received, give rise to a knowledge or suspicion that someone is engaged in money laundering, terrorist and/or proliferation financing.

The firm may choose to combine the roles of the CO with the MLRO depending upon the size and nature of prescribed financial services that it is involved in.

- State the applicable AML/CFT laws and guidelines and commitment to adhere to them.

Policy & Procedure Document

- Importantly, the level of detail in your policies and procedures depends on the size, structure and complexity of the business and the level of exposure to ML/TF risks. For example, the compliance P&P of a small business may be less complex than those of a large business. However, the P&P must be tailored to the specific business and its inherent requirements i.e. clientele, geographical region, products etc.

The P&P sets out the standards that employees, agents and anyone authorized to act on a company's behalf must meet. These standards must be understood, adhered to, and be easily accessible by all relevant staff. The relevant staff must know the policies, for example what is required to identify clients, keep records, enhanced due diligence procedures, knowledgeable regarding the obligations in accordance with AML/CFT laws and red flags to recognize, assess, escalate and report suspicious transactions. The relevant staff needs enough information to process and complete a transaction or account opening properly as well as identify customers and keep records as required.

Policy & Procedure Document

- The P&P is analyzed by the Supervisory Authority to ensure their completeness, approve or recommend amendments of any deficiencies are identified, and expect that firms will be able to demonstrate how they are effectively implemented during an examination. Although directors and senior officers may not be involved in the daily compliance program, they must understand the legal obligations placed on them, their staff and the entity itself.

Management must prioritize and popularize a company wide culture of AML/CFT compliance by setting an example to the rest of the company and promoting ethical behavior.

Finally, our recently passed Financial Transactions Reporting Act 2018 includes the requirement for DNFBP's to implement procedures for the prevention of activities related to identified risks, i.e. corruption, cyber crime, human trafficking, money laundering, proliferation or financing of weapons of mass destruction, terrorism or financing of terrorism or such other risks as the minister may prescribe by regulation.

Thank you for your attention!

