


Legislative Updates Regarding Anti-Money Laundering/Combating the Financing of Terrorism

Presented by the Compliance Commission (CC)



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);
 - ▶ Anti-Terrorism Act 2018 (ATA) ; and
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New AML/CFT Orders in 2018

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

Key Additions under the FTRA

➤ The definition for Designated Non Financial Business and Profession

FTRA 2018	FTRA 2000
<p data-bbox="580 525 749 558">Section 4(e)</p> <p data-bbox="580 615 1363 733">“A counsel and attorney or accountant when they engage in, or carry out transactions for a client concerning —</p> <ul data-bbox="580 748 1363 1353" style="list-style-type: none"><li data-bbox="580 748 1110 781">(i) The buying or selling of real estate;<li data-bbox="580 791 1080 823">(ii) A deposit or investment of cash;<li data-bbox="580 833 1276 866">(iii) The management of client funds or securities;<li data-bbox="580 876 1363 953">(iv) The management of bank, savings or securities accounts;<li data-bbox="580 963 1363 1041">(v) The organization of contributions for the creation, operation or management of a legal person;<li data-bbox="580 1051 1363 1175">(vi) The creation, incorporation, operation or management of a legal person or legal arrangement, and buying and selling of a business entity;<li data-bbox="580 1185 1363 1262">(vii) The provision of a registered office or acting as a registered agent;<li data-bbox="580 1272 1363 1353">(viii) The acting as or arranging for another person to act as, a nominee shareholder for another person.”	<p data-bbox="1388 525 1589 558">Section 3(1)(k)</p> <p data-bbox="1388 615 2170 819">“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 data-bbox="1388 876 2170 1043" style="list-style-type: none"><li data-bbox="1388 876 2023 909">(i) For the purposes of deposit or investment;<li data-bbox="1388 919 2170 952">(ii) For the purpose of settling real estate transactions; <p data-bbox="1388 962 1421 995">or</p> <ul data-bbox="1388 1005 1870 1038" style="list-style-type: none"><li data-bbox="1388 1005 1870 1038">(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 business

commits 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 officer

the 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 Act

may 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.”

Key Additions under the POCA

- ▶ **Establishment of Ministerial Council** – Section 4(1) & (2)

- The Ministerial Council shall be responsible to
 - (a) determine an identified risk as defined under section 2; and
 - (b) assess and make necessary recommendations from time to time to ensure the effective implementation of the Identified Risk Framework to minimize or eliminate identified risks.
- The Ministerial Council shall be comprised of:
 - (a) The Attorney General;
 - (b) Minister of Finance;
 - (c) Minister of Financial Services;
 - (d) Minister of Foreign Affairs;
 - (e) Minister of National Security; and
 - (f) The National Identified Risk Framework Co-Ordinator (nominated by the A.G).



Key Additions under the POCA

- ▶ **The National Identified Risk Framework Coordinator** – Section 5
 - The National Identified Risk Framework Coordinator shall be responsible for:
 - (a) chairing meetings of the Identified Risk Framework Steering Committee as established under section 6 ;
 - (b) liaising with regulators and maintaining an ongoing review of their adherence to the IRF;
 - (c) directing public training on identified risk matters and public outreach;
 - (d) attending technical meetings of the CFATF, FATF and other recognised international agencies; and
 - (e) preparing summary reports of the activities of the IRF Steering Committee.

Key Additions under the POCA

► **The Identified Risk Framework** – Section 6

- The Identified Risk Framework Steering Committee is mandated to:
 - (a) coordinate a national risk assessment periodically to identify, assess and understand the identified risks and ensure that such assessments are updated and relevant;
 - (b) maintain surveillance of FATF pronouncements regarding country risk application of enhanced due diligence;
 - (c) have regards of reports by FI/DNFBPs of persistent regulatory failures by a jurisdiction or foreign financial institution and to prepare list of such jurisdictions;
 - (d) advise financial institutions of obligations to apply enhanced due diligence to transactions emanating from such named jurisdictions or foreign institutions named by IRFSC and the FATF;
 - (e) coordinate the development, regular review and implementation of national policies and activities designed to mitigate identified risks;
 - (f) collect and analyse statistics and other information from competent authorities to assess the effectiveness of the IRF;
 - (g) coordinate measures to identify, assess and understand the impact of Parts IV,V and VI of the Act;
 - (h) report to the Ministerial Council; and
 - (i) establish appropriate mechanisms to provide information on identified risks to relevant financial institutions, self-regulatory bodies and professional associations



Key Additions under the POCA

- ▶ **Failure To Disclose - Section 12(1)(a)(b) & (2)** – In order for a person, firm, or sole practitioner engaged in accountancy or legal services involving the participation in real property transactions concerning the buying or selling of real property and business, the management of client money, bank savings, or the creation of trusts, to commit an offence of failure to disclose three conditions must be satisfied.

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.

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.

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

- ▶ **Objective** – Section 3

- One of the objectives of POCA is to introduce powers relating to unexplained wealth.

- ▶ **Application for an Unexplained Wealth Order nisi** – Section 75

- This section applies when apply where the relevant person —

(a) is or has been—

(i) a politically exposed person;

(ii) a public office holder;

(iii) a respondent to an application for civil forfeiture pursuant to Part V of this Act;


(iv) convicted of an offence punishable with imprisonment in The Bahamas;

(v) convicted of an offence punishable with imprisonment under a law of a foreign jurisdiction, in relation to acts or omissions which, had they occurred in The Bahamas, would have constituted an offence in The Bahamas;

(vi) the recipient of property obtained by criminal conduct including gifts caught by the act;

(vii) the subject of restraint, confiscation or forfeiture proceedings in a foreign jurisdiction;
or

(viii) an individual or officer of an entity subject to United Nations Security Council sanction;



b) has been charged with one or more of the following types of criminal conduct—

(i) bribery;

(ii) a corruption offence of extortion or misconduct in public office;

(iii) falsification of accounts;

(iv) stealing by reason of service or employment;

(v) money laundering;

(vi) fraud;

(vii) drug trafficking;

(viii) firearms trafficking;

(ix) proliferation of weapons of mass destruction;

(x) human trafficking; or

(xi) any identified risk.

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 NIRF 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 FIU.

► **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.”



Key Additions 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 Additions 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 Program



"I'm not here for committing a crime — I'm here for failing to comply with a guideline."



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; and
- b. The CC will give its reason for the decision.

THANK YOU FOR YOUR TIME!

