

# **GUIDANCE ON SUSPICIOUS TRANSACTIONS/ ACTIVITIES**

**The Compliance Commission of The Bahamas  
1<sup>st</sup> April, 2021**

# Outline

- **What is a suspicious transaction?**
- **What are reasonable grounds to suspect?**
- **Factors of Suspicion – Red Flags for DNFBPs**
- **What is a Suspicious Transaction Report (STR)?**
- **What is the procedure for filing a STR?**
- **How to submit a quality STR?**
- **What is the importance of filing a STR?**
- **Who should file an STR?**
- **What Legislation in The Bahamas is mandated for Suspicious Transaction Reporting?**
- **How are persons protected from reporting suspicious transaction reports?**
- **What is Tipping Off?**
- **What are the penalties for failing to report a STR?**
- **What programs should DNFBPs maintain to comply with the suspicious transactions requirements?**
- **Where to file your STR?**

# What is a Suspicious Transaction?

- Suspicious transactions are financial transactions that you have reasonable grounds to suspect are related to the commission of a money laundering offence. This includes transactions that you have reasonable grounds to suspect are related to the attempted commission of a money laundering offence.
- Suspicious transactions also include financial transactions that you have reasonable grounds to suspect are related to the commission of a terrorist activity financing offence or proliferation financing offence. This includes transactions that you have reasonable grounds to suspect are related to the attempted commission of a terrorist activity financing offence or proliferation financing offence.
- **“Reasonable grounds to suspect”** is determined by what is reasonable in your circumstances, including normal business practices and systems within your industry.

Source: FINTRAC, Guideline 2: Suspicious Transactions, December 2010.  
[http://www.imolin.org/doc/amlid/Canada/FINTRAC Guidelines on Suspicious Transaction Reporting 2010.pdf](http://www.imolin.org/doc/amlid/Canada/FINTRAC_Guidelines_on_Suspicious_Transaction_Reporting_2010.pdf)

# What is a Suspicious Transaction? Cont'd

- Suspicious transactions are financial transactions in which there are reasonable grounds to suspect such transactions or attempted transactions are related to the proceeds of criminal conduct.
- **“Reasonable grounds to suspect”** are determined by what is reasonable in your circumstances, including normal business practices.

**Source: Financial Intelligence Unit, Compliance Commission Training for DPMS (see further on the Compliance Commission’s website).**

# What are reasonable grounds to suspect?

## **Simple Suspicion:**

- Is a hunch or intuition which leads you to think that ML, TF or PF may be occurring
- You may not be able to articulate reasons for suspicion.

## **Reasonable Grounds to suspect:**

- Submit an STR to FIU
  - Based on an assessment of facts, context and indicators there is a possibility that ML, TF, or PF is occurring.
  - Able to present reasons for suspicion but no verification needed.

## **Reasonable Grounds to believe:**

- This is a higher threshold.
- This is beyond what is required to submit an STR.
- These are verified facts that support ML/TF/PF has occurred.

# Factors of Suspicion – Red Flags for DNFBP's

- The following are examples of potentially suspicious activities, or “red flags,” for both money laundering (ML) and terrorist financing (TF). ML/TF indicators can relate to (i) identifying the person or entity, (ii) client behavior, (iii) financial transactions and/or (iv) products or services. Although these lists are not exhaustive, they are provided to assist the financial institutions in recognizing possible money laundering and terrorist financing schemes.

## Money Laundering – Red Flags (Generally)

- There is an inability to properly identify the client or there are questions surrounding the client's identity.
- The client refuses or tries to avoid providing information required, or provides information that is misleading, vague, or difficult to verify.
- The client refuses to provide information regarding beneficial owners or provides information that is false, conflicting, misleading or substantially incorrect.
- There are inconsistencies in the identification documents or different identifiers provided by the client, such as address, date of birth or phone number.
- Client produces seemingly false information or identification that appears to be counterfeited, altered or inaccurate.

**Source: FINTRAC, [https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/accts\\_mltf-eng](https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/accts_mltf-eng).**

# Factors of Suspicion – Red Flags for DNFBP's

## Money Laundering Red flags – Real Estate Sector

- Client inadequately explains the last minute substitution of the purchasing party's name.
- Client negotiates a purchase for the market value or above the asked price, but requests that a lower value be recorded on documents, paying the difference “under the table”.
- Client buys back a property that he or she recently sold.
- Frequent change of ownership of same property, particularly between related or acquainted parties.

Source: FINTRAC, [https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/real\\_mltf-eng](https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/real_mltf-eng)

## Factors of Suspicion – Red Flags for DNFBP's

### Terrorist Financing – Red Flags

#### Generally for DNFBPs:

- Transactions involving certain high-risk jurisdictions such as locations in the midst of or in proximity to, armed conflict where terrorist groups operate or locations which are subject to weaker ML/TF controls.
- The use of funds by a non-profit organization is not consistent with the purpose for which it was established.
- Transactions involve individual(s) or entity(ies) identified by media and/or sanctions lists as being linked to a terrorist organization or terrorist activities.

#### Accountants:

- Client is uncertain about location of company records.
- Company carries non-existent or satisfied debt that is continually shown as current on financial statements.
- Company is paying unusual consultant fees to offshore companies.

#### DPMS:

- Unusual payment methods, such as large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's cheques, or payment from third-parties.
- A customer paying for high-priced jewellery or precious metal with cash only.



# What is a Suspicious Transaction Report?

- A Suspicious Transaction Report is a report to be made to the Financial Intelligence Unit by the Money Laundering Reporting Officer. All reporting entities and DNFBPs are obligated to report suspicious transactions (**Section 25, FTRA, 2018**), which in the opinion of that employee gives rise to a knowledge or suspicion that another person is engaged in money laundering (**Section 5 (a), The Financial Intelligent (Transactions Reporting) Regulations, 2001**).
- The Financial Transactions Reporting Act, 2018 (FTRA 2018), outlines the procedures for reporting suspicious transactions and grants protection to those persons who report suspicious transactions.
- Section 25 of the FTRA 2018 mandates a financial institution to report a transaction which the financial institution knows, suspects, or has reasonable grounds to suspect, that the transaction or proposed transaction involves money laundering, terrorist financing, proliferation financing, or any associated predicate offence, to the FIU.

## What is the procedure for filing a STR?

- Once an employee has a suspicion or knowledge of ML/TF activity the suspicious transaction should be reported and escalated from the employee to the MLRO.
- The MLRO will conduct an investigation of the suspicion. The MLRO will then file the STR electronically on the FIU's electronic filing platform: <https://fiuconnect.fiubahamas.bs/casekonnnect/index.php?module=users/login>. N.B. The FIU is presently conducting training on case connect electronic filing.
- This platform allows registered Money Laundering Reporting Officers (MLROs) or Designated Reporting Officers (DROs) to complete, file, and submit all STRs along with relevant supporting documentation to the FIU safely and securely from their offices.
- Although the prescribed form for reporting a suspicious transaction to the FIU is via the platform, in accordance with section 25 subsections (2) and (3) of the FTRA, STRs may be forwarded to the FIU by way of facsimile transmission, electronic mail, other similar means of communication, and in the case of urgent extenuating circumstances, orally.
- Sufficient information should be disclosed, which indicates the nature of and reason for the suspicion. Where a Registrant has additional relevant evidence that could be made available, the nature of this evidence must be indicated.

## How to submit a quality STR?

- i. State the specific facts as to how the DNFBP knows, suspects or has reasonable grounds to suspect that the transaction involves the proceeds of criminal conduct or an offence under POCA.
- ii. Submit the report as soon as practicable after.
- iii. Contain all the necessary information in the First Schedule of the FTRA, 2018 (see section 25 (2) (b) of the FTRA 2018).
- iv. The MLRO should take into account all relevant files – Know Your client documents and transaction documents.
- v. Review the contents of the STR to ensure that all the necessary information is included.

# What is the importance of filing a Suspicious transaction report?

Filing reports of suspicious activity or transactions to the Financial Intelligence Unit (FIU) is an important step in the global fight against money laundering, terrorist financing and proliferation financing. It is also important for DNFBPs to report because:

- It is mandated by law (FTRA, 2018, POCA, 2018 and the ATA, 2018 and associated Regulations and Codes of Practices). It is punishable by penalties such as fines and prison sentences;
- It protects the financial system from being abused by criminals and their associates;
- It detects, disrupts and prevents the flow of illicit funds;
- It allows Regulators to establish emerging threats through analysis of patterns and trends;
- It allows DNFBPs, the MLRO and connected employees the opportunity to understand and apply AML/CFT measures and demonstrate their awareness of the risk to their various businesses and identify red flags should they occur.

# Who should file an STR?

- All FI's and DNFBPs supervised by the Compliance Commission.

Section 5 (a) of the Financial Intelligence (Transactions Reporting) Regulations 2001 provides:

- “A financial institution shall institute and maintain internal reporting procedures which include provision — (a) identifying and appointing a person (“the Money Laundering Reporting Officer” who shall be registered with the Financial Intelligence Unit) to whom a report is to be made of any information or other matter which comes to the attention of an employee and which in the opinion of that employee gives rise to a knowledge or suspicion that another person is engaged in money laundering”.

Section 25 (1) (b) FTRA, 2018 also provides:

- DNFBPs where they know, suspect or have reasonable grounds to suspect suspicious or potential suspicious transactions should make a report to the FIU.

# What Legislation in the Bahamas is mandated for Suspicious Transaction Reporting?

- **FATE, Recommendation 20 mandates STR reporting as follows:** If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to TF/PF, it should be required to report promptly its suspicions to the Financial Intelligence Unit. Financial institutions should be required to report all suspicious transactions, including attempted transactions, regardless of the amount of the transaction.
- **Section 25 of the FTRA 2018** states that where any person conducts or seeks to conduct any transaction by, through or with a financial institution (whether or not the transaction or proposed transaction involves cash), and the financial institution knows, suspects or has reasonable grounds to suspect that the transaction or the proposed transaction involves proceeds of criminal conduct as defined in the POCA, or any offence under the POCA, the financial institution MLRO shall, as soon as practical after forming that suspicion, report that transaction or proposed transaction to the FIU (**see also sections 25 – 30 and s. 49 FTRA, 2018**).
- **Section 12 (2) of the POCA, 2018** requires that any person who knows, suspects 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; proceeds of drug trafficking or any related crime and fails to report such knowledge or suspicion is guilty of an offence.
- Reporting is to be done “as soon as practically possible”.

# What Legislation in the Bahamas is mandated for Suspicious Transaction Reporting? Cont'd

See also:

## **ATA, 2018**

Section 49(4) and s. 70(1), s. 70(3)(b). The penalty for failing to report is set out in s. 70(5).

## **FI(TR)R, 2001**

s. 5(a) – duty of the MLRO to report suspicion to the FIU.

s. 6(2)- requires DNFBPs to ensure all relevant staff are trained from time to time and in any case at least once per year in the recognition and handling of transactions. New employees should also be trained (s. 6(3))

## **Travellers Currency Declaration (Amendment) Act, 2018**

s. 4(1) and generally.

## What Legislation in the Bahamas is mandated for Suspicious Transaction Reporting?

**The Commissions Codes of Practice also mandate DNFBPs report STRs and notify the CC of the same:**

- All DNFBPs have a clear obligation to ensure:
  - that each relevant employee knows to which person he should report suspicions; and,
  - that there is a clear reporting chain under which those suspicions will be passed without delay to the MLRO.
- Once an employee has reported his suspicion to the MLRO, he has fully satisfied his statutory obligation.

**See the Codes of Practices for specific industry requirements: <https://ccb.finance.gov.bs/regulatory-legal-framework/codes-of-practice/>**

**See also the Commissions Awareness Brochure for when a DNFBP should report: available on the Commission's homepage under compliance articles <https://ccb.finance.gov.bs/compliance-articles/>**



# How are persons protected from reporting suspicious transaction reports?

- DNFBPs are protected for fulfilling their obligations under the FTRA, 2018 (see s. 29 FTRA, 2018).
- There is no liability for any breach of any secrecy or confidentiality provisions in any other law for DNFBP's acting under the FTRA, 2018 for ST reporting.

## **The Financial Transactions Reporting Act 2018 Section 27 states –**

- (1) Except for the purposes of the administration of this Act, no person shall disclose any information that will identify the person who prepared or made a suspicious transaction report or handled the underlying transaction.
- (2) No person shall be required to disclose a suspicious transaction report, or any information contained in the report or provided in connection with it, in any judicial proceeding unless the court is satisfied that the disclosure of the information is necessary in the interests of justice.

## **Section 28 FTRA 2018 further states -**

- (1) Where any information is disclosed or supplied by any person in a suspicious transaction report made, pursuant to section 25, by any person, no civil, criminal or disciplinary proceedings shall lie against that person:
  - (a) In respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person or
  - (b) For any consequences that follow from the disclosure or supply of that information

# How are persons protected from reporting suspicious transaction reports? Cont'd

(2) Where any information is disclosed or supplied, pursuant to section 26, by any person, no civil, criminal or disciplinary proceedings shall lie against that person –

- (a) In respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or
- (b) For any consequences that follow from the disclosure or supply of that information

# What is Tipping Off?

Tipping Off is letting the customer know that he is or might be the subject of a suspicion. They need to know what to say to a customer and what to do to avoid alerting the customer to the concerns that the financial institution might be harboring criminal activity.

According to the Financial Transactions Reporting Act 2018 section 30 states –

(1) A person commits an offence –

(a) if he knows or suspects that any disclosure relating to a suspicious transaction has been made; and

(b) if he makes a disclosure relating to the suspicious transaction which is likely to prejudice any investigation

which might be conducted following the disclosure referred to in paragraph (a)

(2) A person who commits an offence pursuant to subsection (1) is liable –

(a) on summary conviction to a term of imprisonment of twelve years or to a fine not exceeding five hundred thousand dollars or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding twenty years or to a fine or to both.

# What are the penalties for failing to report a STR?

The Financial Transactions Reporting act 2018 illustrates various penalties for those persons who breach the law. Section 49 of the FTRA 2018 states :

A financial institution which intentionally fails to submit a report to the Financial Intelligence Unit as required by sections 25 and 26 commits a summary offence and is liable to imprisonment for a term up to five years or to a fine of up to five hundred thousand dollars or to both.

Section 50 of the FTRA 2018 sets out the law on false or misleading statements as follows:

A financial institution which –

- (a) Intentionally makes a false or misleading statement;
- (b) Provides false or misleading information; or
- (c) Otherwise fails to state a material fact in connection with its obligations under this Part, including the obligation to make a suspicious transaction or currency transaction report.

Any person who commits this offence is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or both.

- See also ATA, 2018 section 70(1) and s. 70(3)(b).

# Breaches Cont'd

**Section 51 of the FTTRA 2018 states:**

**Confidentiality Violation:**

**A financial institution which intentionally discloses to a facility holder or a third-party information in violation of section 25 commits an offence and is liable upon summary to imprisonment for a term of up to five years or to a fine up to five hundred thousand dollars to both.**

# What programs should DNFBPs maintain to comply with the suspicious transactions requirements?

- All AML staff must be training at least once a year FI(TR)R 2001, s. 6(2). Documentation should include the date of training, location, organization, presenter information, topic and qualification. Certifications should be kept and properly documented and accessible. Training for staff on detecting suspicious transactions and red flags/typologies identified through the STR process or relevant to the sector to enable staff with identifying suspicious transactions.
- Additionally, staff must be aware of internal procedures for reporting suspicious transactions within the Company, aware of legal requirements, aware of importance of suspicious transaction reporting decision, the role of the MLRO, supervisory regime, record keeping requirements as by law for 5 years, firms systems should be risk based by focusing additional resources on areas of high risk.
- Training on conducting proper due diligence and monitoring for activity that may be inconsistent with a customer's source of income or regular business activities and penalties for AML violations.
- Whistleblowing is an important mechanism in the prevention and detection of improper conduct, fraud and corruption. The firm should implement an appropriate policy, which shall raise awareness of the whistleblowing process and raise concerns about improper conduct within in the firm. The policy shall outline the mechanisms for the protection of employees who make such disclosure and the strategies implemented to address such matters as reporting, responsibility and confidentiality.

# Where To File Your STR?

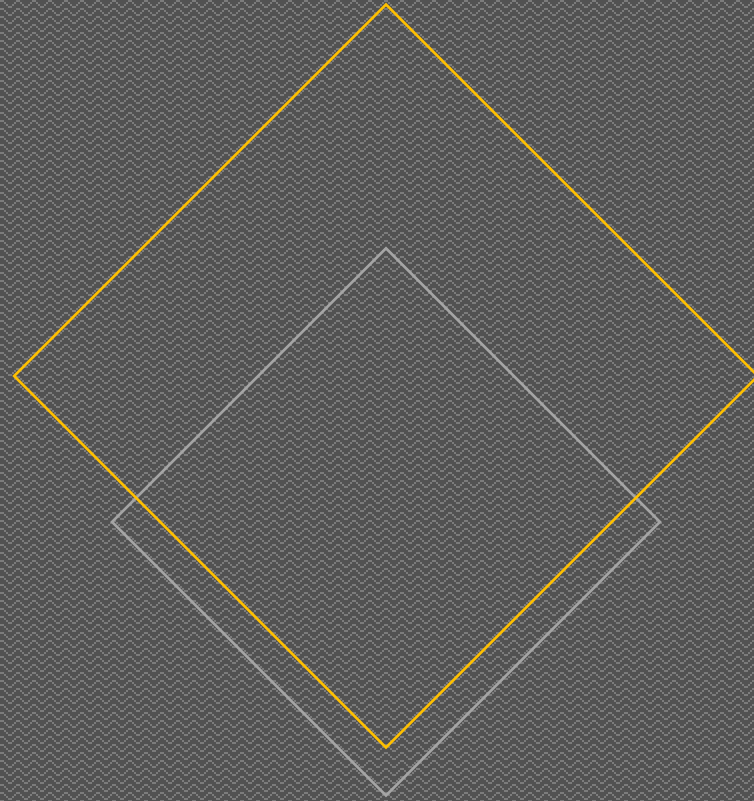
The Director  
Financial Intelligence Unit  
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Frederick Street  
P.O. Box SB-50086  
Nassau, New Providence  
The Bahamas

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Opening hours: 9:00 am to 5:00 pm, Monday to Friday, except on public holidays.

- STRs are to be filed to the FIU at the following link:  
<https://fiuconnect.fiubahamas.bs/casekonnnect/index.php?module=users/login>
- Once the MLRO is registered with the FIU and upon approval from the FIU, an email with a user profile and a temporary password will be received and the submission of STRs can commence and to access the above link.
- Although the prescribed form for reporting a suspicious transaction to the FIU is via the platform, in accordance with section 25 subparagraphs (2) and (3) of the FTRA, STRs may be forwarded to the FIU by way of facsimile transactions, electronic mail, other similar means of communication, and in the case of urgent extenuating circumstances, orally.

# Thank You!



**An attendance certificate will be sent to you.**