

2023

# LAWYERS

## OBLIGATIONS FOR ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM AND COUNTERING PROLIFERATION FINANCING & OTHER IDENTIFIED RISK

This information pamphlet is provided for lawyers\* that are required to be supervised by The Compliance Commission of The Bahamas for Anti-Money Laundering, Countering the Financing of Terrorism and Countering Proliferation Financing purposes.

\*According to s.4 of the FTRA, 2018 a lawyer is a Designated Non-Financial Business or Person when they offer prescribed financial services.

THE COMPLIANCE COMMISSION OF THE BAHAMAS

# The Compliance Commission of The Bahamas



## The Establishment of the Compliance Commission

The Compliance Commission (CC) is a Statutory Authority established by Section 39 of the Financial Transactions Reporting Act 2000, Ch. 368 (continued in existence per section 31 of the Financial Transactions Reporting Act 2018)<sup>1</sup> for the express purpose of ensuring that financial institutions which fall within its remit comply with the provisions of the substantive laws in The Bahamas relating to Anti-Money Laundering/Countering the Financing of Terrorism/Countering Proliferation Financing (AML/CFT/CPF)<sup>2</sup> contained in the:

- Anti-Terrorism Act, 2018
- Anti-Terrorism (Amendment) Act, 2019
- Anti-Terrorism (Amendment) Act 2022

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<sup>1</sup> Hereafter referred to as the FTTRA.

<sup>2</sup> Anti-Money Laundering, Countering the Financing of Terrorism and Countering Proliferation Financing will be referred to herein as AML or AML/CFT/CPF.

- Anti-Terrorism Regulations, 2019
- Anti-Terrorism (Amendment) Regulations, 2019
- Financial Intelligence Unit Act, 2000
- Financial Intelligence (Transactions Reporting) Regulations, 2001
- Financial Transactions Reporting Act, 2018
- Financial Transactions Reporting (Amendment) Act 2022
- Financial Transactions Reporting Regulations, 2018
- Financial Transactions Reporting (Wire Transfer Regulations), 2018
- International Obligations (Economic and Ancillary Measures) Act, 1993
- International Obligations (Economic and Ancillary Measures) (Amendment) Act, 2019
- Proceeds of Crime Act, 2018
- Proceeds of Crime (Amendment) Act 2022
- Travellers Currency Declaration (Amendment) Act, 2018
- Register of Beneficial Ownership Act 2018
- Register of Beneficial Ownership (Amendment) Act, 2019
- Register of Beneficial Ownership (Amendment) (No 2) Act, 2019
- Register of Beneficial Ownership (Amendment) Act 2020
- Register of Beneficial Ownership (Amendment) Act 2022

## **The Functions of the Compliance Commission**

- To maintain a general review of financial institutions (FI) in relation to the conduct of financial transactions.
- To ensure compliance with the provisions of the FTRA and AML related legislation.
- To conduct on-site examinations of the business of a financial institution when deemed necessary by the CC.

## **Financial Institutions Supervised by the Compliance Commission**

The CC is the Supervisory Authority for ALL financial institutions listed in section 32 (2) of the FTRA. This includes law firms that provide prescribed financial services pursuant to Section 4 (e) of the FTRA.

## **Designated Non-Financial Business and Professions (DNFBP's) - Providing Prescribed financial services under section 4(e) of the FTRA**

**A Law Firm is a financial institution for AML purposes in any situation when it engages in, or carries out transactions for a client concerning:**

(i) the buying and 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; and (viii) the acting as or arranging for another person to act as, a nominee shareholder for another person.

## **Compliance Commission's Risk Based Supervisory Framework for Designated Non-Financial Business and Professions**

The Commission does not licence DNFBPs, the Commission supervises DNFBPs. It is responsible for ensuring financial institutions under its supervision comply with AML/CFT/CPF laws, regulations and guidelines. It supervises its registrants which includes law firms through a combination of the following programmes:

- Registration,
- Risk based on-site and off-site examinations,
- An effective risk-based supervisory & enforcement framework,
- Education, training and awareness,
- Directives, Codes, Guidance's, and Notices when necessary.

The CC organizes AML/CFT/CPF training programmes for law firms, including webinars, in person training and educational resources are available on the CC's website.

The CC also convenes meetings with the representatives of the Bahamas Bar Association. The purpose of these meetings is to collaborate and to discuss any AML/CFT/CPF concerns of the profession and the CC. The CC also uses the

opportunity to update the profession on any current trends, CC strategic plans, as well as legislative changes, including those being contemplated.

### **When is a Law Firm Subject to AML/CFT /CPF Laws?**

Law firms are subject to the AML/CFT/CPF laws on two levels.

1

**On the first level**, all law firms are subject to the provisions of the Proceeds of Crime Act (POCA) Sec. 12. The law requires persons to inform the Financial Intelligence Unit (FIU), the Police and other relevant agencies of any suspicious transactions that come to light during the course of their activities. The reporting of suspicious transactions is mandatory and a person who fails to report a suspicious transaction is liable to prosecution. Section 18 of the Act provides for protected disclosures of information in the course of a person's trade, profession, business or employment.

2

**On the second level**, law firms that offer prescribed financial services pursuant to section 4 (e) of the FTRA are in addition to being subject to the POCA, are also subject to the AML/CFT/CPF regime contained in the FTRA 2018, the FIUA 2000, all AML/CFT/CPF related laws and all Regulations and Guidelines made pursuant to these Acts.

## **Obligation to Register Electronically with the Compliance Commission**

The CC has implemented a mandatory system of electronic registration for all law firms that provide prescribed financial services. To register electronically with the Commission [here](#).

## **Registration of Law Firms with The Commission**

It is mandated by law, in accordance with section 33(1) of the FTRA for law firms carrying out business pursuant to section 4(e) of the FTRA to register with the CC. Law firms that fail to comply with the provisions of section 33(2) of the FTRA commits an offence and is liable to a penalty of five thousand dollars (\$5,000) for each day that the FI remains unregistered. Further, where a law firms fails to notify the CC as required under section 33(3), the FI commits an offence and is liable to a penalty of five thousand dollars (\$5,000) for each failure to notify the CC.

## Registration Guidance

1. The CC's Registration forms are available online via the CC's electronic portal. Log onto the CC's website at <https://ccb.finance.gov.bs> and select Register at the top of the website.
2. Forms must be completed online and submitted via the CC's electronic portal.

## **Obligation to comply with AML/CFT/CPF Laws and Guidelines**

Law firms that provide prescribed financial services are required to comply with provisions of the Bahamian AML/CFT/CPF legislations.

## **Obligation to Submit to AML/CFT/CPF Examination**

Under section 32(1)(b) of the FTRA, the CC is mandated to conduct risk-based AML/CFT/CPF examinations of the prescribed financial services performed by law firms, when deemed necessary. The CC carries out its supervisory oversight by means of a risk assessment exercise to determine the frequency and intensity of the CC examination of the firm. Firms are required to complete a Risk Assessment Questionnaire issued by the CC for an initial assessment of the inherent risks and controls for managing ML/TF/PF risk.

The CC administers four (4) types of examinations, as outlined below:

- routine (on-site only);
- follow-up (on-site or off-site examination);
- random (on-site only); and
- special (on-site only).



The examination assesses the firm's level of compliance with the requirements of AML/CFT/CPF laws, obligations and guidelines.

Routine On-site Examinations (OSE) – Provides an in-depth assessment of the firm's risk profile, policies and procedures, and test the adequacy, effectiveness and control measures implemented to mitigate risks by a firm to comply with its AML obligations; i.e. the FTRA, FTRR, the FI(TR)R, POCA, other AML legislations and the CC Codes of Practice for Lawyers and the FIU Guidelines.

Follow-up Examinations - are conducted for the purpose of addressing the deficiencies of the AML/CFT/CPF systems of law firms that have been identified through the assessment and the routine on-site examination. Such examinations are specific in scope and will focus on the identified weaknesses. Follow-up examinations are conducted by Examiners of the CC's Inspections Unit.

Random Examinations – the CC's examiners randomly select law firms to be the subject of an OSE. The Random OSE tests the routine examination process.

Special Examinations - where a financial institution supervised by the CC has violated provisions of the AML/CFT/CPF laws and/or guidelines, or where information comes to the attention of the CC that a financial institution is providing financial services despite having advised it to the

contrary, a special on-site examination is conducted by the CC.

### Routine OSE Procedures

Before a routine OSE can be conducted, law firms must have a written risk based AML/CFT/CPF Policies and Procedures document. If there is no written risk based policy and procedure document available the law firm must submit one within 45 days and be aware of the CC administrative penalties, available on the CC website. The CC's frequency and intensity of the on-site examination of the Law firm is on a risk sensitive basis, taking into account;

- the risk rating assigned to the firm by the CC;
- the latest risk based on-site examination evaluation;
- the Commission's understanding of the ML/TF/PF risks profile of the Law firm, its characteristics and in particular its diversity;
- the identified ML/TF/PF risks, the policies, procedures and internal controls associated with the law firm, as identified by the CC's assessment of the law firm's risk profile; and
- the ML/TF/PF risks present in The Bahamas.

In their role as gatekeepers, DNFBPs must comply with FTRA 2018 requirements and other relevant AML/CFT/CPF legislation and applicable guidelines. This includes implementing a compliance program that encompasses the obligations listed below:

- Conduct and document a risk assessment of the company/firm's inherent risks to determine the level of exposure to the risks of ML/TF/PF, other identified risks and implement controls to mitigate risks;
- Establish written risk-based policies and procedures that comply with the provisions of AML laws and guidelines this is to be kept up to date, approved by senior management and/or Board of Directors, available to the competent authority and includes enhanced measures to mitigate high risk areas;
- Identify and verify customers when opening an account, establishing a business relationship or carrying out the transaction and their source of funds and source of wealth;
- Appoint a senior management CO and a MLRO;
- Keep transaction, identification and verification records;
- Conduct on-going monitoring of customer transactions;
- Report suspicious transactions to the FIU, the agency charged with, amongst other things, receiving and analyzing suspicious transactions reports from financial institutions;
- Ensure the management and appropriate staff receive ongoing AML/CFT/CPF training;
- Conduct internal compliance effectiveness reviews of its operations at least once every two (2) years;

- Submit to AML examination by the relevant regulatory authority and its appointed agents;
- High risk client relationships (for example, high risk PEPs) have to be approved by senior management in compliance with guidelines in their policies and procedures manual;
- The firm must have a risk management system for customers and beneficial owners and screen clients to determine and monitor if they are listed on the United Nations Sanctions list; and have procedures to address the risk of a potential breach or non-implementation of targeted financial sanctions.
- The firm should have a risk management system for customers and beneficial owners and screen clients to determine if they are PEPs and higher risk relationships, and/or originate from a higher risk country as defined by FATF and apply the appropriate measures defined by the FATF.

### **Steps for the Routine Examination Procedure:**

1. The licensed public accountant, engaged in conducting a routine on-site examination, must first undergo the relevant training by the CC prior to obtaining a Letter of Appointment, which gives him or her the authorization to commence an examination.
2. A law firm may select the licensed public accountant of its choice using the electronic portal; however, the examining accountant must be independent of the firm

and the firm should satisfy itself that the examiner has a valid Letter of Appointment.

3. In the case of a routine on-site examination, once completed, the examining accountant should have an exit meeting with the firm to discuss the examination findings.
4. The examining accountant must submit the completed examination form to the CC to be evaluated. Those law firms that receive an adverse rating on the routine on-site examination will be scheduled for a follow-up examination.
5. Routine onsite examinations are conducted by approved accountants acting as agents of the CC or CC examiners.

### **UN Sanctions/Requirements and Ministerial Directives<sup>3</sup>**

The firm should be aware of and apply the policies and procedures regarding financial institutions in sections 43-49 of the Anti-Terrorism Act including reporting to the relevant competent authorities any assets frozen or actions taken in compliance with the prohibition requirements for Targeted Financial Sanctions related to terrorism/terrorist financing and proliferation financing, including attempted transactions.

### **Penalty for Non-Compliance with Sanctions Reporting**

- **Section 49(1) of the ATA 2018** sets out the duty of DNFBPs to report the existence of funds from a

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<sup>3</sup> Please refer to FATF Recommendations 6-7 and the ATA sections 43-49.

designated entity, listed entity or from an entity/legal entity that commits, participates, or facilitates terrorist acts or financing of terrorism to the Financial Intelligence Unit. Section 49(3) ATA 2018 sets out the fine penalty which is not to exceed Two Hundred and Fifty Thousand dollars (\$250,000).

- **Section 69(1) ATA 2018** sets out the duty of DNFBPs to disclose information relating to offences and terrorist acts to the Commission of Police or Director of Public Prosecutions. Section 69(4) ATA 2018 sets out the penalty of a fine of Ten Thousand Dollars (\$10,000) and imprisonment for two (2) years.
- **Section 70 ATA 2018** sets out the duty for DNFBPs to disclose information relating to property used for the commission of offences to the Financial Intelligence Unit. The penalty for this offence is imprisonment for up to five (5) years (section 70(4) ATA 2018).

The United Nations (UN) Security Council Resolution 1267<sup>4</sup> (UNSCR) and its subsequent resolutions has produced a list of designated persons/countries with known or suspected terrorist connections. The Resolutions require countries to freeze, without delay, the funds or other assets and to ensure

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4 <https://www.un.org/securitycouncil/content/resolutions-0> (see for any other subsequent Resolutions); Please refer to 2.3 of the Compliance Commission Codes for Lawyers 2018 (revised September 2020).

that no funds or other assets are made available, directly or indirectly, to or for the benefit of any person or entity designated by or under the authority of the UNSCR. This list is updated periodically and is forwarded to the UN's contact in each jurisdiction. The National Identified Risk Framework Coordinator (NIRFC) 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. Further, the FIU shall be responsible for furnishing the Attorney General with the information required to facilitate an application under section 45 of the ATA where anyone, as designated on the list, has funds in The Bahamas. Lawyers/Firms should refer to section 44 of the ATA for specific details regarding the reporting obligation in accordance with the law.

Upon receipt of the list of these designated entities, the financial institution shall:

- Freeze all the funds held by it in the name of a designated entity;
- Inform the AG and the FIU that a designated entity has funds with the financial institution, notify the CC;
- Inform the designated entity that the funds held at the financial institution have been frozen; and

- Firms must cross-check whether any customer or beneficiary appears on any designated list before opening accounts and on an ongoing basis.

To view current UNSCR Notices visit the CC’s website [here](#) and see also the CC Guidance on UN Sanctions [here](#)

### **Higher Risk Countries<sup>5</sup>**

Law firms should apply enhanced due diligence measures to business relationships and transactions with natural and legal persons and financial institutions from countries which FATF stipulated as high risk countries. Also, have regard to information on the likely country risks and weaknesses in AML/CFT/CPF systems of other countries. The type of enhanced due diligence applied should be effective and proportionate to the risks.

### **Politically Exposed Persons (PEPs)**

A politically exposed person (PEP) is defined by the Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function.<sup>6</sup>

- Foreign PEPs: individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or government, senior

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<sup>5</sup> Please refer to 22.5 of the Compliance Commission Codes for Lawyers 2018 (revised September 2020).

<sup>6</sup> Please refer to 22.4 Compliance Commission Codes for Lawyers 2018 (revised September 2020).



politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials.

- Domestic PEPs: individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials.
- International organization PEPs: persons who are or have been entrusted with a prominent function by an international organization.
- Family members are individuals who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership.
- Close associates are individuals who are closely connected to a PEP, either socially or professionally.

Firms should be aware of -

- the number of clients that are domestic PEPs if any;
- the number of clients that are international organization PEPs;
- the number of clients that are foreign PEPs;
- the number of clients that are family members or close associates of PEPs;
- the firm's risk management system for customers and beneficial owners to determine if they are PEPs; and

- in cases where there is a higher risk relationship assessed with a PEP, are these relationships approved by senior management? Include measures to mitigate high risk and ensure compliance with guidelines in the policy and procedure document.

### **Fit and Proper Test<sup>7</sup>**

Law firms should ensure full compliance to fit and proper best practices of its key persons namely, beneficial owners and the individuals involved in the management and control of the firm, as well as those who exercise significant power or discharge significant responsibilities in relation to the day-to-day operations.

### **Beneficial Ownership**

A beneficial owner is a natural person who ultimately owns or controls a legal entity.<sup>8</sup> The transparency of beneficial ownership of legal persons and legal arrangements is a requirement by statute law and in accordance with FATF standards to deter and prevent the misuse of corporate vehicles. Law firms are required to put in place adequate measures to:

- a) prevent legal persons and legal arrangements from being used for criminal purposes;

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<sup>7</sup> Please refer to section 16 and section 30 of the CC Codes of Practice for Lawyers and KYE presentation on the CC website.

<sup>8</sup>[https://ccb.finance.gov.bs/wpcontent/uploads/2021/05/RegisterofBeneficialOwnershipAct2018\\_1.pdf](https://ccb.finance.gov.bs/wpcontent/uploads/2021/05/RegisterofBeneficialOwnershipAct2018_1.pdf)

- b) make legal persons and arrangements sufficiently transparent; and
- c) ensure that accurate and up to date basic information and beneficial ownership information are available and can be accessed by the CC in a timely fashion.<sup>9</sup>

A legal entity<sup>10</sup> must notify its registered agent or the Registrar General within fifteen days of identifying any person as (i) a beneficial owner or (ii) a registerable entity.<sup>11</sup> All Registered Agents must take reasonable steps to (i) verify the identity of the beneficial owners and registerable legal entities of each legal entity for which it acts as a registered agent.

All Registered Agents must establish, collect and maintain a database that is accessible by the secure search system and enter into the database the following particulars for each legal entity, beneficial owner, registerable legal entity and an exempt person for which it acts as a Registered Agent for.

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<sup>9</sup> Please refer to s. 15 of the Compliance Commission Codes for Lawyers 2018 (revised September 2020); See also FATF Recommendations 24 and 25.

<sup>10</sup> Refer to the definition of 'Legal Entity' in the Register of Beneficial Ownership (Amendment) Act 2019 and Register of Beneficial Ownership (Amendment) Act 2020.

<sup>11</sup> Refer to Section 8(1) of the Register of Beneficial Ownership Act, 2018 and Section 4 of the Register of Beneficial Ownership (Amendment) Act 2020.

## Administrative Penalties

Pursuant to section 57 of the FTRA, the CC as a Supervisory Authority may impose administrative penalties to financial institutions and individuals of financial institutions for failure to comply with provisions of the FTRA and POCA.<sup>12</sup>

The Commission's Administrative Penalties may be [accessed here](#).

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**For more information from the Compliance Commission**

**Mail:** The Compliance Commission of The Bahamas  
#31 Poinciana House  
East Bay Street  
P.O. Box N-3017  
Nassau, The Bahamas

**Call:** (242) 604-4331

**Email:** [compliance@bahamas.gov.bs](mailto:compliance@bahamas.gov.bs)

**Website:** [Click here](#).

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<sup>12</sup> Please refer to Compliance Commission Policy on Administrative Penalties on the Compliance Commission Website.