



THE INSURANCE COMMISSION
OF THE BAHAMAS

**LADDER OF SUPERVISORY INTERVENTION:
For Anti-Money Laundering and Countering Financing of Terrorism Compliance
September 2013**

1. INTRODUCTION

This Guide aims to foster awareness and increase the transparency of the Insurance Commission of The Bahamas' ('the Commission') framework for remedial supervisory intervention with respect to Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) matters. It describes the types of supervisory measures most likely to be undertaken when insurers have not met the AML/CFT requirements set out in the Commission's Anti-Money Laundering and Combating Financing of Terrorism Guidelines for Insurance Companies ('AML/CFT Guidelines') and helps the Commission with early intervention and prompt corrective action.

Intervention measures outlined in this Guide should not be interpreted as compulsory or exhaustive, but represent the actions the Commission may take as warranted by the particular situation. It is to be noted that there are further penalties for offences committed under the various AML legislation (See Appendix for further details).

2. APPLICABILITY

This guide addresses the intervention actions in cases of breaches, or matters of non-compliance, of Anti-Money Laundering or suspicious transaction reporting requirements. The AML-Ladder of intervention is consistent with the Commission's supervisory Ladder of Intervention.

This Guide applies to companies registered to provide long term insurance business in and from within The Bahamas. While companies registered to carry on general insurance business are not required to comply with the AML/CFT guidelines, the Commission recommends general insurance companies consider money laundering and terrorist financing risks in their operations and manage those risks as appropriate.

3. COMPLIANCE WITH THE STATUTORY AND REGULATORY REQUIREMENTS

Requirements of the AML/CFT Guidelines fall into two main categories: (1) Statutory (such as customer verification, record keeping and reporting suspicious activity) and (2) Regulatory (such as submitting to examinations on AML/CFT systems, on-going training programmes, etc.)

The development and enforcement of the requirements contained within the AML/CFT Guidelines will provide a good indication that an insurer or intermediary is in compliance with AML/CFT requirements established in legislation.

Insurers and intermediaries are allowed some degree of flexibility in relation to the level of customer due diligence information to obtain and verify, and as to the intensity of relationship and transaction monitoring. It is important that insurers and intermediaries are able to demonstrate effective implementation of all components of the AML/CFT system as well as ensure that a proper assessment was undertaken to determine the money laundering and terrorist financing risks facing the insurance company.

4. NON-COMPLIANCE WITH STATUTORY AND REGULATORY REQUIREMENTS

Failure to adhere to the relevant statutory or supervisory requirements set out in the AML/CFT Guidelines could lead to supervisory and/or regulatory intervention action. The course of action taken by the Commission will depend on the nature of the violation. When considering the appropriate intervention action or combination of actions needed to address potential concerns or contravention of specified AML/CFT requirements, the Commission will consider the following, among other factors:

1. The nature and extent of the infringement.
2. Whether there are a number of deficiencies when considered collectively, indicate a pattern of non-compliance.
3. The extent to which the directors and officers have acted in an unfit and improper manner.
4. Any corrective measures undertaken by the insurer.
5. Action taken by the Commission or other regulatory authorities in previous or similar cases.

5. NOTIFICATION OF ISSUES TO THE COMMISSION

An insurer is required to immediately notify the Commission of any matter arising that it considers a material impediment to its ability to comply with specified AML/CFT requirements and its plan to address this deficiency. Examples of such circumstances include, but are not limited to:

- ❖ The breakdown of administrative or control procedures relevant to any of the insurer's operations (including management information systems) which will result or is likely to result in failure to comply with one or more requirements explicitly expressed in our AML/CFT Guidelines.
- ❖ Any event arising which makes it impractical for an insurer to comply with one or more specified AML/CFT requirements.
- ❖ Any other matter arising that is likely to be material to the Commission's supervision of the insurer's operations. For example, the inability to carry out customer verifications especially beneficial owners, suspicious transaction reports relating to substantial assets, terrorist financing, breach of sanctions or to high profile persons, such as politically exposed persons (PEPs).

6. LADDER OF SUPERVISORY INTERVENTION

The actions indicated below are cumulative; i.e. actions indicated at lower levels of risk are implicitly included in actions that could be considered for insurers with a higher risk profile. Also, if circumstances warrant, actions can be taken at risk levels lower than that indicated in the Guide. It is important to note intervention measures outlined in this Guide should not be interpreted as rigid or exhaustive as circumstances may vary significantly case by case.

An insurance company which has developed internal controls and enforces sound AML policies and procedures, poses less risk for money laundering and terrorist financing than one which has no internal controls or less stringent policies and procedures. Consequently, the higher the money laundering/terrorist financing risk, the more vigorous supervision will be applied.

Stage 0 – No deficiencies identified	Intervention Activity
<p>At this stage, the insurance company or intermediary has developed and enforces sound practices, policies and procedures in compliance with the requirements set out in the Commission’s AML/CFT Guidelines and AML Laws.</p>	<p>Normal Monitoring</p> <ul style="list-style-type: none"> - Routine on-site/offsite examinations - Incorporate AML topics into quarterly prudential meetings - Random on-site examinations
Stage 1 – Significant, but not critical deficiencies are identified in the AML/CFT system.	Intervention Activity
<p>At this stage, there are one or more deficiencies identified in the insurer’s or intermediary’s AML/CFT practices, policies and procedures that may impede the insurer or intermediary from complying fully with the requirements of the AML/CFT Guidelines and/or AML Laws. If these deficiencies are not rectified the insurer’s AML/CFT system may be deemed ineffective. For example, inadequate AML training for staff; no review of internal procedures on the effectiveness of the AML program.</p>	<p>Further/Additional Monitoring</p> <ul style="list-style-type: none"> - Notify Senior Management and/or the Board of Directors, in writing, of concerns identified and that the company is required to take measures to mitigate or rectify the identified deficiencies. - Meet with Senior Management and/or Board of Directors to discuss concerns identified and remedial actions required. - Conduct follow-up on-site examination. - Require Senior Management to submit a Board approved action plan to address deficiencies identified and submit regular status updates on the progress of the action plan. - Escalate monitoring of the insurer as warranted, including conducting special or random on-site examinations.
Stage 2 – Critical deficiencies are identified in the AML/CFT system	Intervention Activity
<p>At this stage, the nature of deficiencies identified is material/ critical or the deficiencies identified in stage 1 have not been adequately addressed. For example, MLRO not appointed or not functioning; Improper record keeping; Failure to make suspicious transactions reports to FIU; No evidence of AML training.</p>	<p>Enhanced Monitoring and follow up of corrective action.</p> <p>In addition to the actions noted at stage 1, the Commission may also:</p> <ul style="list-style-type: none"> - Levy fines. - Impose conditions and/or restrictions on the insurer’s registration. - Direct the insurer to appoint an MLRO. - Require changes to management, MLRO and/or the composition of the Board. - Call meetings with the Board. - Require a special audit or investigation at the expense of the insurer or intermediary. - Issue and enforce an order of compliance.

Stage 3 – Failure to correct critical deficiencies or non-compliance	Intervention Activity
At this stage, the insurer has failed to remedy the deficiencies identified at Stage 2, or the insurer has committed an offence named in the scheduled offences (see Appendix).	Further Enhanced Monitoring and follow up of corrective action. In addition to the actions noted in earlier stages, the Commission may also: <ul style="list-style-type: none">- Impose sanctions and penalties pursuant to the various AML legislation.- Advise the appropriate legal or regulatory authorities of the breach.- Suspend or cancel the insurer’s registration.- Commence legal proceedings, where applicable.

APPENDIX

SANCTIONS FOR NON-COMPLIANCE

The failure of a financial institution carrying on insurance business to comply with the requirements of the following legislation could lead to criminal sanctions:

- Insurance Act, Chapter 347, External Insurance Act, Chapter 348
- Proceeds of Crime Act, Ch. 93
- Financial Transactions Reporting Act (FTRA), Chapter 368
- Financial Transactions Reporting Regulations (FTRR)
- Financial Intelligence (Transactions Reporting) Regulations (FITRR)
- Anti-Terrorism Act, Chapter 107

MONEY LAUNDERING RELATED OFFENCES, PENALTIES, AND DEFENCES UNDER THE PROCEEDS OF CRIME ACT, CH. 93

OFFENCE	PENALTIES	DEFENCES
<p><u>Concealing, Transferring Or Dealing With The Proceeds Of Criminal Conduct (Section 40)</u></p> <p>It is an offence to use, transfer, send or deliver to any person or place, or to dispose of or otherwise deal with any property, for the purpose of concealing or disguising such property, knowing, suspecting or having a reasonable suspicion that the property (in whole or in part, directly or indirectly) is the proceeds of criminal conduct. For this offence references to concealing or disguising property includes concealing or disguising the nature, source, location, disposition, movement or ownership or any rights with respect to the property. This section applies to a person's own proceeds of criminal conduct or where he knows or has reasonable grounds to suspect that the property he is dealing with represents the proceeds of another's criminal conduct.</p>	<p>On summary conviction - 5 years imprisonment or a fine of \$100,000, or both.</p> <p>On conviction on information - imprisonment for 20 years or to an unlimited fine or both</p>	
<p><u>Assisting Another To Conceal The Proceeds Of Criminal Conduct (Section 41)</u></p> <p>It is an offence for any person to provide assistance to a criminal for the purpose</p>	<p>On summary conviction - 5 years imprisonment or a fine</p>	<p>It is a defense that the person concerned did not</p>

<p>of obtaining, concealing, retaining or investing funds, <u>knowing</u> or suspecting, or having reasonable grounds to suspect that those funds are the proceeds of serious criminal conduct and/ or a “relevant criminal offence”.</p>	<p>of \$100,000, or both.</p> <p>On conviction on information to imprisonment for 20 years or to an unlimited fine or both. <i>It is important to note that these are mandatory penalties.</i></p>	<p>know, suspect or have reasonable grounds to suspect that the funds in question are the proceeds of serious criminal conduct, or that he intended to disclose to a police officer his suspicion, belief or any matter on which such suspicion or belief is based, but there is a reasonable excuse for his failure to make a disclosure.</p>
<p><u>Failure To Disclose Section 43)</u></p> <p>It is an offence if a person fails to disclose to the FIU or a police officer that another person is engaged in money laundering related to proceeds of drug trafficking or a relevant offence where he knows, suspects or has reasonable grounds to suspect that such is the case and that knowledge or suspicion came to his attention in the course of his trade, profession, business or employment. Disclosure to the MLRO will suffice as disclosure to the authorities under this section.</p>	<p>On summary conviction - 5 years imprisonment or a fine of \$100,000 or both.</p> <p>On conviction on information - imprisonment for 20 years or to an unlimited fine or both.</p>	<p>It is a defense to prove that the defendant took all reasonable steps to ensure that he complied with the statutory requirement to report a transaction or proposed transaction to the Financial Intelligence Unit; or that in the circumstances of the particular case, he could not reasonably have been expected to comply with the provision.</p>
<p><u>Acquisition, Possession Or Use (Section 42)</u></p> <p>It is an offence to acquire, use or possess property which are the proceeds (whether wholly or partially, directly or indirectly) of criminal conduct, knowing, suspecting or having reasonable grounds to suspect that such property are the proceeds of criminal conduct. Having possession is construed to include doing any act in relation to the property.</p>	<p>On summary conviction by 5 years imprisonment or a fine of \$100,000 or both.</p> <p>On conviction on information to imprisonment for 20 years or to an unlimited fine or both. <i>(It is important to note that these are mandatory penalties).</i></p>	<p>That the property in question was obtained for adequate consideration. [NB: The provisions of goods or services which assist in the criminal conduct does not qualify as consideration for the purposes of this offence.]</p>
<p><u>Tipping Off (Section 44)</u></p> <p>It is also an offence for anyone who knows suspects or has reasonable grounds to suspect that a disclosure has been made, or that the authorities are acting, or are proposing to act, in</p>	<p>The punishment on summary conviction for the offence of “tipping-off” is a term of three years imprisonment or a fine of \$50,000, or both;</p>	<p>It is a defense if the person making the disclosure did not know or suspect that the disclosure was likely to prejudice the investigation, or that the disclosure was</p>

<p>connection with an investigation into money laundering, to prejudice an investigation by so informing the person who is the subject of a suspicion, or any third party of the disclosure, action or proposed action. Preliminary enquiries of a customer in order to verify his identity or to ascertain the source of funds or the precise nature of the transaction being undertaken will not trigger a tipping off offence before a suspicious transaction report has been submitted in respect of that customer <u>unless</u> the enquirer knows that an investigation is underway or the enquiries are likely to prejudice an investigation.</p>	<p>On conviction on information the penalty is a term of imprisonment for ten years or an unlimited fine or both (see sections 44 and 45 of the Proceed of Crime Act, 2000 Ch. 93).</p>	<p>made under a lawful authority or with reasonable excuse</p>
<p>Where it is known or suspected that a suspicious transaction report has already been disclosed to the Financial Intelligence Unit, the Police or other authorized agencies and it becomes necessary to make further enquiries, great care should be taken to ensure that customers do not become aware that their names have been brought to the attention of the authorities.</p>		

MONEY LAUNDERING RELATED OFFENCES, PENALTIES AND DEFENCES UNDER THE FTRA & FITRR

These offences relate to the various AML obligations imposed on financial institutions.

OFFENCES	PENALTIES	DEFENCES
<p><u>Failing or refusing to provide records, information or explanation when required to do so by the Commission (FTRA)</u></p>	<p>Maximum fine on summary conviction is \$50,000 or 3 years imprisonment or both.</p>	
<p><u>Verification Offences FTRA s. 12)</u></p> <p>It is an offence in each case to proceed to allow for the provision of a new facility or the conduct of any occasional transaction as the case may be without having verified the identity of the customer and any person on whose behalf he may be acting as required.</p>	<p>On summary conviction: Maximum fine of \$20,000 for individuals and \$100,000 for Corporations.</p>	<p><i>Either</i> that all reasonable steps were taken to verify or under the circumstances could not reasonably be expected to ensure that verification has been satisfied.</p>

<p><u>Recordkeeping Offences (FTRA s. 30)</u></p> <p>Failure to maintain records as required.</p>	<p>On summary conviction \$20,000 maximum in the case of an individual and \$100,000 maximum in the case of a corporation.</p>	
<p><u>Suspicious Transactions Reporting Offences (FTRA s. 20)</u></p> <ol style="list-style-type: none"> 1. Failure to make an STR in circumstances that would require that a report be made. 2. Knowingly making any statement that in false or misleading in a material particular; or knowingly omitting from any statement any matter or thing without which the statement is false or misleading in a material particular. 3. Disclosing information about the contemplation or existent of an STR - <ol style="list-style-type: none"> a) for the purpose of obtaining, directly or indirectly, an advantage or a pecuniary gain for yourself or any other person; or b) intentionally to prejudice any investigation into the commission or <ol style="list-style-type: none"> a. possible commission of a money laundering offence. 	<p>On summary conviction a \$20,000 maximum fine for an individual and \$100,000 for a corporation.</p> <p>On summary conviction a maximum fine of \$10,000.</p> <p>On summary conviction a maximum fine of \$5,000 or 6 months imprisonment for an individual and in the case of a corporation a maximum fine of \$20,000. Maximum penalty on summary conviction: 2 years imprisonment.</p>	<p>Same as the defense for failing to verify.</p>
<p><u>Failure to comply with any regulation under the Financial Intelligence (Transactions Reporting) Regulations or comply with any guideline, code of practice, directive, rules or other instructions issued by the FIU or a Regulator</u></p> <p>e.g. Maintain Internal Reporting Procedures, appoint an MLRO, and provide staff education and training programmers in the detection and prevention of money laundering.</p>	<p>Punishable by a fine of \$10,000 on summary conviction or \$50,000 for a first offence, and \$100,000 for any subsequent offence on conviction in the Supreme Court.</p>	<p>It is a defense to for the financial institution to prove that it took all reasonable steps and exercised due diligence to comply with the requirements of the regulations, guidelines, codes or instructions as the case may be.</p>

TERRORIST FINANCING OFFENCES. PENALTIES AND DEFENCES UNDER THE ANTI-TERRORISM ACT

OFFENCES	PENALTIES	DEFENCES
<p><u>Offence of Terrorism (s. 3)</u></p> <p>The carrying out (or aiding, abetting, counseling, procuring, inciting, conspiring or soliciting the carrying out) of an act: (a) that constitutes an offence under in any of the Treaties listed in the First Schedule; or (b) for the purpose of intimidating the public or compelling a government/international organization to do or to refrain from doing anything that is intended to cause -</p> <ul style="list-style-type: none"> a) death or serious bodily harm to a civilian; b) serious risk to health or safety of the public; c) substantial property damage; or d) serious interference with an essential service, facility or system. 	<p>On conviction on information where death ensues, murder or treason, the maximum sentence is death. In other cases the maximum penalty is life imprisonment.</p>	
<p><u>Providing or collecting funds for criminal purposes. (s.5)</u></p> <p>Providing or collecting funds; or providing financial services or making such services available to persons, whether by means that are direct or indirect, unlawful and willful (including through aiding, abetting, counseling, procuring, inciting, conspiring or soliciting in relation thereto) with the intention that the funds or services are to be used or with the knowledge that the funds or services are to be used in full or in part in order to carry out an offence of terrorism under section 3.</p>	<p>On conviction on information, a maximum imprisonment term of 25 years.</p>	
<p><u>Liability of a legal entity (Anti-Terrorism Act 2004 s.6)</u></p> <p>Where an offence referred to under sections 3 or 5 is committed by a person responsible for the management or control of an entity located or registered in The Bahamas or in any other way organized under the laws of The Bahamas, that entity is also liable, in circumstances where the person committed the offence while in that capacity.</p>	<p>Maximum penalty on conviction – two million dollars (\$2M).</p>	

<p><u>Duty to Report (s.7)</u></p> <p>Failure to report, where there are reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offence under the Act.</p>	<p>On conviction on information a maximum penalty of a fine of \$250,000 or to imprisonment for a term of 5 years.</p>	
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The ATA incorporates all offences contained in the Treaties listed in its First Schedule, which are reproduced in 3 (b) below. It is important to note that terrorist offences in the ATA have been incorporated into the list of predicate offences appearing in the First Schedule of POCA and thereby subject to the requirement imposed upon Licensees under the FTRA and the FIUA. Section 7 of the ATA requires the reporting of offences under the Act to be made to the Commissioner of Police.

THE FIRST SCHEDULE TO THE ATA - LIST OF TREATIES RELATIVE TO TERRORISM

- ❖ Convention on offences and certain other acts committed on Board Aircraft signed at Tokyo 14th September, 1963.
- ❖ Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16th December, 1970.
- ❖ Convention for the Succession of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 13th September, 1971.
- ❖ Convention on the Prevention and Punishment of Crimes against Internationally protected persons including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14th December, 1973.
- ❖ International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations 17th December, 1979.
- ❖ International Convention for the Suppression of the Financing of adopted by the General Assembly of the United Nations on 9th December, 1999.
- ❖ Inter-American Convention Against Terrorism adopted at the Second Plenary Session of the Organization of American States held June 3, 2002.
- ❖ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10th March 1988.
- ❖ Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10th March 1988.
- ❖ International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15th December, 1997.
- ❖ Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24th February, 1988.
- ❖ Convention on the Marking of Plastic Explosives for the Purpose of Detection signed at Montreal on 1st March, 1991.
- ❖ Convention on the Physical Protection of Nuclear Material signed at Vienna on 3rd March 1980.