FIRST DRAFT

THE COMPLIANCE COMMISSION OF THE BAHAMAS

ANTI-MONEY LAUNDERING HANDBOOK & CODE OF PRACTICE FOR LAWYERS

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EXPLANATORY FOREWORD

The Compliance Commission "the Commission" has power under section 46 of the Financial Transactions Reporting Act 2000 (FTRA) to issue codes of practice for financial institutions falling within its supervisory scope. Lawyers are deemed to be financial institutions when providing services in the circumstances specified in section 3 (1) (k) of the FTRA, and thereby subject to supervision for anti-money laundering (AML) purposes by the Commission in relation to those services. The services covered in section 3 (1) (k) of the FTRA are where a lawyer *receives funds* in the course of his business for the purpose of investing, depositing, simply to hold in his client account or to settle a real estate transaction.

This Code is for the purpose of providing lawyers with practical guidance on how to implement the provisions of the AML legislation and examples of good practice. It also supports the regulatory objective of maintaining the reputation of the Bahamas as a first-rate international business centre with zero tolerance for criminal activity.

Although the FTRA defines a **"counsel and attorney"** to be a financial institution in respect of certain activities, for the purposes of this Code, and having regard to the realities of the legal profession, the terms "law firm" or "firm" are used instead throughout this document to mean a sole practitioner or a firm and the attorneys practising by either of these means, that are financial institutions for the purposes of section 3 (1) (k) of the FTRA. The terms "lawyer", "law firm" and "firm" are used interchangeably throughout this Code.

Unless the context otherwise requires, the masculine terminology used throughout the document includes the feminine gender and the singular terminology includes the plural.

The Commission intends to issue periodic directions to supplement this Code as changing circumstances dictate.

Finally, the Commission would like to express its gratitude to all those in the profession, representative bodies and Regulators that contributed to the development of this Handbook and Code.

MR. JOHN O. KENNING, O.B.E.

CHAIRMAN

13TH NOVEMBER 2002

AML HANDBOOK AND CODE OF PRACTICE FOR LAWYERS

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APPENDICES

DEFINITIONS

"AML'" means anti-money laundering

"cash" means, coins, paper money, travelers' cheques, postal money orders and other similar bearer type negotiable instruments.

"Eligible introducer" means any one of the following, on which reliance may be placed by a law firm that the primary obligation to verify the identity of a customer has been carried, and the law firm receives written confirmation form the eligible introducer that it has verified the customer:

- Licensed Bahamian bank or one from a country in Appendix B.
- Licensed Bahamian trust company or one from a country in Appendix B.
- Licensed Bahamian casino or one from a country in Appendix B.
- Any person regulated by the Securities Commission of The Bahamas or its equivalent from a country in Appendix B.
- Any life insurance company regulated by the Registrar of Insurance or its equivalent from a country in Appendix B.

(SEE SECTION 12 FOR THE CIRCUMSTANCES UNDER WHICH ELIGIBLE INTRODUCTIONS ARE PERMISSIBLE)

"FATF" means the Financial Action Task Force. (See Appendix I)

"CFATF" means the Caribbean Financial action Task Force. (See Appendix I)

"Financial intermediary services" are those services defined in section 3 (1) (k) of the FTRA which make a lawyer, in relation to those services, a financial institution for AML purposes. Those services are where he *receives funds* in the course of his business for the purpose of investing, depositing, simply to hold in his client account or to settle a real estate transaction.

Throughout this Code references are made to a **"facility"**, **"facility holder"** and **"occasional transaction"** and the procedures to be adopted in relation to such. This has been done as a matter of convenience consistent with the terms used under the FTRA. The terms are defined for the purposes of this Code as follows:

- a **"facility"** is any account or arrangement that is provided by a lawyer to a client and by, through or with which the client may conduct two or more transactions whether or not they are so used. A facility in the case of a lawyer is essentially any of those services that would qualify him to be a financial institution set out in the preceding paragraph. It also specifically includes provision of facilities for safe custody, such as safety deposit boxes.

- a **"facility holder"** is the client and any person who is authorised to issue instructions in relation to how transactions should be conducted through a facility, provided by the lawyer.

- an **"occasional transaction**" is any cash transaction over $10,000 that involves a payment, deposit, withdrawal, debit, repayment, encashment, exchange, or transfer of such sums otherwise than by the facility holder, in relation to any facility held by a lawyer. An example of this may be where someone purports to

pay a sum in cash over $10,000 to the firm for the benefit of a facility holder of that firm.

It is recognised that these terms may not reflect the common usage terminology applied to the type of activity which a particular law firm engages in or the type of arrangement it provides to its clients; nonetheless they should, be adapted by analogy to the circumstances of each activity in implementing the requirements of this Code.

"FTRA" means the Financial Transactions Reporting Act 2000

"FTRR" means the Financial Transactions Reporting Regulations 2000

"FIUA" means the Financial Intelligence Unit Act 2000

"FIU" means the Financial Intelligence Unit.

"FI(TR)R" means the Financial Intelligence (Transactions Reporting) Regulations 2001

"Lawyer", **"law firm"**, **'firm"** refers to a counsel and attorney admitted to practice at the Bahamas Bar in his capacity as a financial institution pursuant to section 3 (1) (k) of the FTRA i.e. when providing financial intermediary services, unless the context otherwise requires.

"POCA" means the Proceeds of Crime Act 2000

"STR" means suspicious transaction report

"Transaction" means any deposit, withdrawal, exchange or transfer of funds in cash, by cheque, payment order or other instrument, and includes electronic transmissions of funds.

I BACKGROUND

1 The Compliance Commission

1.1 Section 39 of the FTRA establishes the Commission as a body corporate for the purpose of ensuring that financial institutions within its constituency comply with the provisions of this Act. The Commission consists of three Members appointed by the Governor-General.

N.B. the Compliance Commission does not licence or regulate the business activities of the financial institutions for which it has AML supervisory responsibility. Licensing of these activities, if required by law, is regulated by the statutory authority charged with this responsibility.

1.2 Functions of the Commission

< To maintain a general review of financial institutions for which it has supervisory responsibility, in relation to the conduct of financial transactions and to ensure compliance with the provisions of the FTRA;

< To conduct annual on-site examinations (or whenever the Commission deems such to be necessary) of its constituent financial institutions for the purpose of ensuring compliance with the provisions of the AML laws and regulations. The Commission can appoint an auditor, at the expense of the law firm, to conduct such examination and report thereon to the Commission.

1.3 Powers of the Commission

< **Do all things necessary for the performance of its functions including entering into contracts.**

< **Require production of records and the supply of information/explanation-**

The Commission may at all reasonable times require a financial institution to–

- produce transaction records, verification records and any other records prescribed by Regulations that must be kept under the FTRA; and
- provide such information or explanation, as it may reasonably require, for the purpose of enabling it to perform its functions under the FTRA.

< **Issue codes of practice -** The Commission may periodically issue codes of practice for the purposes of the FTRA, particularly for the purpose of providing guidance as to the duties, requirements and standards to be complied with and the procedures (whether as to verification, record-keeping, reporting of suspicious transactions or otherwise) and best practices to be observed by its constituent financial institutions.

< **Ensure that its constituent financial institutions comply with the provisions of the Financial Intelligence (Transactions Reporting) Regulations 2001, and any guidelines issued by the FIU.**

1.4 Registration of lawyers with the Commission

1.4.1 The Commission requires all lawyers to register with it, whether or not they provide financial intermediary services. The registration process is very simple and free of charge. On-line registration is available through the Commission's website.

1.4.2 Those lawyers that do not provide financial intermediary services are required to advise the Commission of such in writing, along with an undertaking to advise the Commission, should this circumstance change at a later date. In such cases, these lawyers that indicate that they do not provide the financial intermediary services are designated **inactive** by the Commission and are exempt from having to submit to the annual routine on-site examination.

2. Money Laundering And Its Vulnerabilities For Lawyers

2.1. Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. Its purpose is to allow them to maintain control over those proceeds and, ultimately, provide a legitimate cover for the source of their income.

2.2 Stages Of Money Laundering

2.2.2. There is no one single method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g., cars or jewelry) to passing money through a complex international web of legitimate businesses and "shell" companies. Initially, however, in the case of drug trafficking and some other serious crimes, such as robbery, the proceeds usually take the form of cash which needs to enter the financial system by some means.

2.2.3. Despite the variety of methods employed, the laundering process is accomplished in three stages, which may comprise numerous transactions, and which could alert a financial institution to criminal activity: The stages are:

a) ***Placement*** - the physical disposal of cash proceeds derived from illegal activity;

b) ***Layering*** - separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity; and,

c) ***Integration*** - the provision of apparent legitimacy to criminally derived wealth. If the layering process has succeeded, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.

2.2.4. The three basic steps may occur as separate and distinct phases, they may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organizations.

2.3 Vulnerability Of Law Firms To Money Laundering

2.3.1. Certain points of vulnerability have been identified in the laundering process, namely:

- entry of cash into the financial system;
- cross-border flows of cash; and,

- transfers within and from the financial system.

2.3.2. Traditionally efforts to combat money laundering have to a large extent concentrated on the deposit taking procedures of banks in particular; i.e., the placement stage. Equally, however, there are also many crimes (particularly the more sophisticated ones) where cash is not involved. Electronic funds transfer systems greatly facilitate this process by enabling cash deposits to be switched rapidly between accounts in different names and different jurisdictions.

2.3.3. Lawyers as providers of a wide range of services are susceptible to being used not only in the layering and integration stages, as has been the case historically, but also as a means to disguise the origin of funds before placing them into the financial system.

2.3.4. The Financial Action Task Force (FATF)[1] typologies of 2000 identified the following money laundering vulnerabilities for law firms:

- Creation of corporate vehicles or other legal arrangements (e.g. trusts);
- Buying and selling of real property;
- Performing financial transactions, such as carrying out various financial operations on behalf of the client, (e.g. cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers);
- Financial and tax advice, in which a criminal with a large sum of money to invest may pose as an individual hoping to legitimately minimise a tax obligation or seeking to place assets out of reach in order to avoid future liabilities; and
- Gaining introductions to financial institutions.

2.3.5. Lawyers should pay particular attention to the money laundering risks presented by the services which they offer to avoid being manipulated by criminals seeking to launder illicit proceeds.

2.3.6 Law practices in The Bahamas are subject to the money laundering laws on two levels. On the first level, all law practices are subject to the provisions of the Proceeds of Crime Act, 2000, in common with all citizens and others affected by this Act. On the second level all law practices that offer financial intermediary services as defined in the FTRA whether pursuant to section 3 (1) (k) or under a financial and corporate service provider licence, in addition to being subject to the Proceeds of Crime Act, are also subject to the AML regime contained in the FTRA, the Financial Intelligence Unit Act 2000 and all regulations and guidelines made pursuant to these Acts, in relation to those financial intermediary services. For the purposes of these services the law firm is deemed to be a financial institution under the FTRA.

3. When Is A Lawyer A Financial Institution?

3.1 Where a lawyer is deemed to be a financial institution, he is required to comply with the AML obligations set out in the relevant legislation. The three circumstances in which a

[1] See Appendix I for a brief overview of the functions of the FATF and the CFATF.

lawyer is deemed to be a financial institution is set out below. For the purposes of this Code, unless otherwise specified, it is only the financial intermediary services set out in paragraph 3.2 below, that are being dealt with by this document.

3.2. Prescribed Financial Intermediary Services under section 3 (1) (k) of the FTRA

3.2.1 A lawyer admitted to practice in The Bahamas is a financial institution for AML purposes in any case where he **receives funds** in the course of his business for any of the following purposes:

(i) investing or making a deposit on the client's behalf in circumstances where the lawyer merely acts, in relation to those funds, as an agent, intermediary or conduit for the client, to facilitate the entry or placement, movement, or removal of such funds, into, within or out of the financial system;

(ii) simply holding such funds in his client account on the client's behalf, and the funds are not for professional fees, disbursements, expenses or bail; and

(iii) to settle a real estate transaction i.e. the sale or purchase of real property including mortgages and auctions.

3.2.2 Law firms are encouraged to separate their financial intermediary services activities from those of the general law practice and to maintain separate and distinct records pertaining to the financial intermediary activities including separate financial records. (See Fig. 1 below). This separation may occur physically through the maintenance of different filing cabinets or systems. It can also be achieved, in the case of information stored electronically by creating separate electronic files for the financial intermediary business. By separating the activities, this will avoid providing access during the on-site examination to files and information with which the Commission is not concerned.

3.3 When acting as a professional trustee or administering or managing funds on behalf of third parties under section 3 (1) (j) of the FTRA.

3.3.1 Section 3 (1) (j) of the FTRA designates any person who provides professionally, services in which he administers, manages or acts as a trustee in respect of funds of another person, as a financial institution for AML purposes.

3.3.2 A trust settlement is therefore a facility for the purpose of the FTRA, and as such is subject to the same verification, recordkeeping and suspicious transactions reporting requirement that other facilities are subject to. Consequently a lawyer acting as a professional trustee is deemed to be a financial institution for this purpose and must verify the identity of the settlor and beneficiaries before agreeing to be a trustee and having the trust settled.

3.3.3 The provision of professional trust services must be provided either pursuant to a licence from the Central Bank or the Inspector of Financial and Corporate Service Providers. Those trust services that are licensed by the Central Bank are subject to supervision by that Regulator. Trust services that are offered professionally under a financial and corporate service providers' licence are subject to AML supervision by the Commission (see figure 2 on page 14).

3.4 Licensed financial and corporate service provider

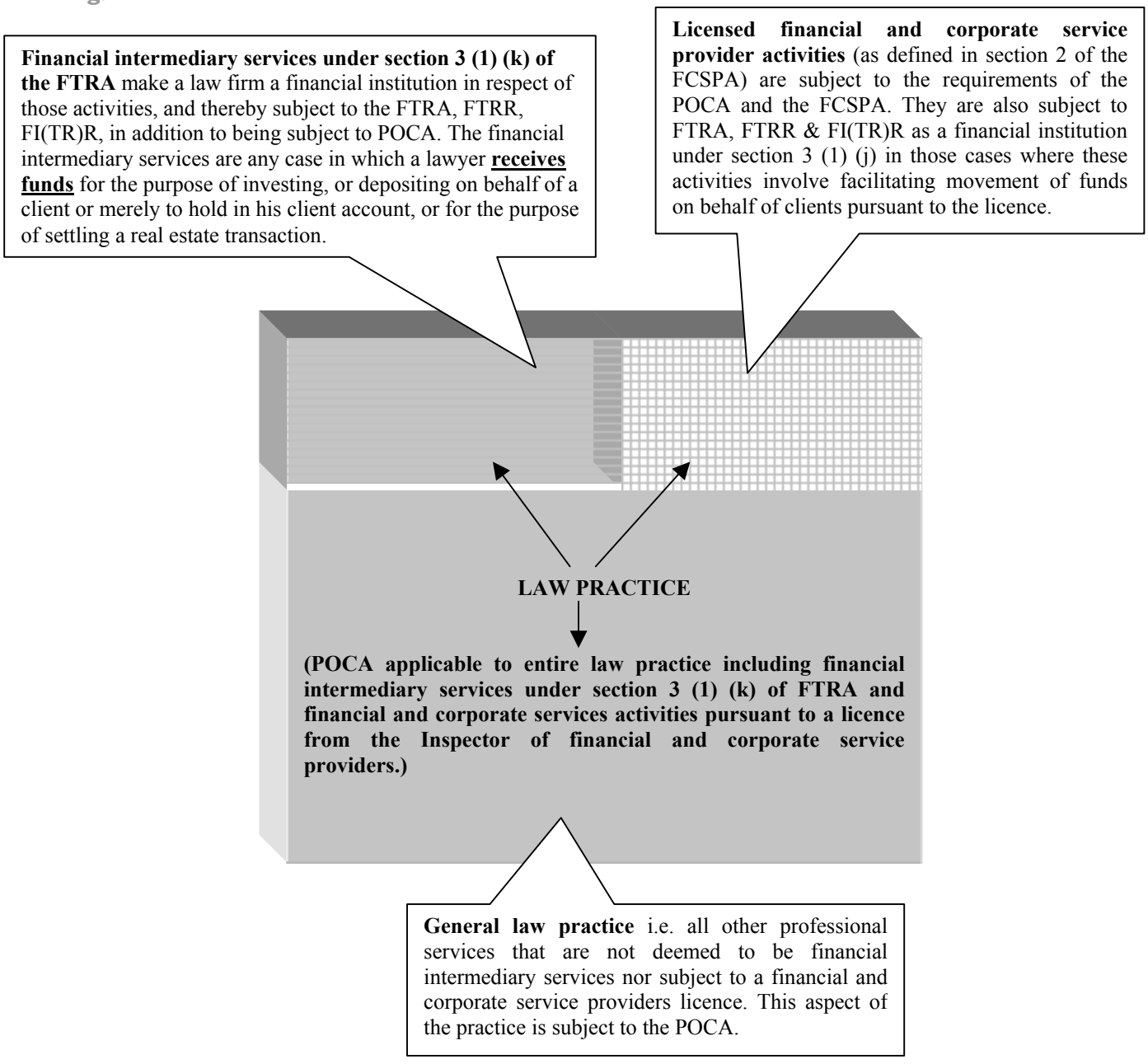
3.4.1 Licensed financial and corporate service providers are considered financial institutions for AML purposes, pursuant to section 3 (1) (j) of the FTRA and thereby subject to

supervision by the Commission where such services rendered involve the licensee in facilitating the movement of funds into, through, around and out of, the financial system on behalf of clients.

3.4.2 The business activity that is carried out under a financial and corporate service providers' licence should also be distinct and separate from the general legal practice as well as the financial intermediary services under section 3 (1) (k) FTRA, of the firm. See Fig. 1 below.

Graphical illustration of a law firm's obligations under the anti-money laundering laws.

Fig. 1



II THE BAHAMIAN ANTI-MONEY LAUNDERING LEGISLATIVE AND REGULATORY FRAMEWORK

4. The Legal framework

4.1 The Bahamian substantive law relating to money laundering is contained in:

- the Proceeds of Crime Act, 2000,
- the Financial Transactions Reporting Act, 2000,
- the Financial Transactions Reporting Regulations, 2000
- the Financial Intelligence Unit Act, 2000, and
- the Financial Intelligence (Transactions Reporting) Regulations, 2001.

4.2 These laws can be viewed and downloaded from the Commission's website at www.bahamas.gov.bs/compliancecommission.

4.3 The legislation sets out procedures which are designed to achieve two purposes: firstly, to enable suspicious transactions to be recognised as such and reported to the authorities; and secondly, to ensure that if a customer comes under investigation in the future, a financial institution can provide its part of the audit trail.

4.4 Money Laundering Offences, Penalties and Defences

4.4.1 The Proceeds of Crime Act, 2000 (POCA) establishes several specific money laundering offences and penalties which are set out in Appendix E. In performing their functions, law firms should pay particularly attention to the vulnerabilities of their service inherent in these offences.

N.B. The offences under the POCA apply to ALL persons and are not limited only to those circumstances where a lawyer is acting as a financial institution. They are therefore applicable to relevant circumstances affecting the general practice of law unlike the FTRA which is restricted to those circumstances in which a lawyer is acting as a financial institution.

4.4.2 In addition there are a number of offences which arise from failing to comply with certain requests or obligations imposed under the FTRA, the Financial Intelligence Unit Act and the Regulations made pursuant to these Acts. A matrix of these offences also appears in Appendix E.

5. The Regulatory Structure

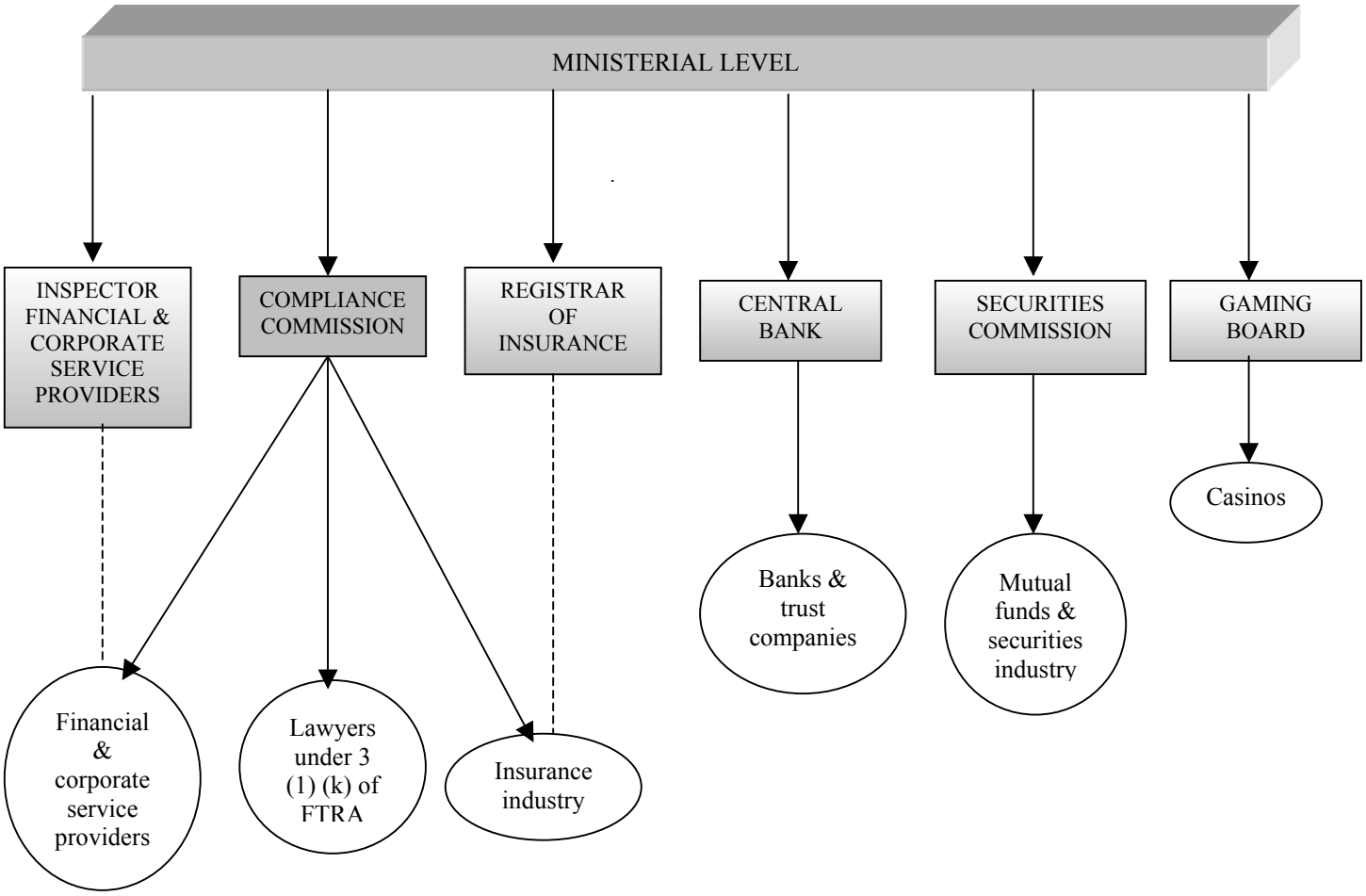
5.1 An organizational chart of the AML regulatory framework is found below at Figure 2 below.

5.2 It will be noted from the organizational chart that the Compliance Commission supervises both the financial and corporate service providers for AML purposes as well as the insurance industry. In addition the Commission, (see section 8) also administers the on-site examination on behalf of the Inspector of Financial and Corporate Service Providers. This is pursuant to arrangements between the Inspector of Financial and Corporate Service Providers, the Commission and the Registrar of Insurance. All other regulatory requirements, apart from AML supervision for these sectors (i.e. licensed financial and corporate service providers and insurers) are administered by the Regulator responsible for licensing and/or registration of the business activities of the licensee.

ANTI-MONEY LAUNDERING REGULATORY STRUCTURE

(To view a version of the organizational chart which incorporates the most current ministerial portfolio responsibility for each regulator, please visit the Commission's website at www.bahamas.gov.bs/compliancecommission)

Fig. 2



III ON-SITE EXAMINATIONS FOR THE COMMISSION

6. The On-site Examination

6.1 The Commission is mandated to carry-out annual on-site examinations of financial intermediary services performed by law firms per section 3 (1) (k) of the FTRA. The Commission has a similar mandate in relation to services carried out under section 3 (1) (j) of the FTRA.

N.B. THE ON-SITE EXAMINATION IS NOT AN AUDIT OF THE BUSINESS ACTIVITIES, IT IS AN AGREED UPON PROCEDURE DESIGNED TO TEST THE ADEQUACY OF AML SYSTEMS THAT HAVE BEEN IMPLEMENTED BY A LAW FIRM FOR THE PURPOSE OF MEETING ITS OBLIGATIONS UNDER THE AML LAWS AND REGULATIONS.

6.2 The Commission's examination year runs from the **1st August** to **31st July** in the following year. During this period all law firms must submit the financial intermediary aspects of their business to a routine on-site examination (See paragraph 7.2 below.)

7. Types of Examinations

7.1 There are four types of on-site examinations which the Commission conducts. These are routine, follow-up, random and "special ".

7.2 Routine Examination

7.2.1 This is the mandatory annual on-site examination. These are conducted by designated licensed public accountants. A law firm is at liberty to select the licensed public accountant of its choice and organise the timing of the examination to suit its convenience.

7.2.2 The licensed public accountant must obtain a letter of appointment from the Commission before he commences the examination. Letters of appointment are issued for the duration of an accountant's current licence.

7.2.3 A routine on-site examination evaluates the law firm's compliance with the anti-money laundering laws i.e. the FTRA, FTRR and the FI(TR)R, and the FIU Guidelines.

7.2.4 The examination is a review of five (5) operational areas of the law firm's financial intermediary activities which include:

(1) the verification/identification of customers;
(2) maintenance of customer verification and transaction records;
(3) reporting suspicious transactions to the Financial Intelligence Unit;
(4) assignment of a Money Laundering Reporting Officer; and
(5) ensuring that internal procedures exist for training personnel on money laundering detection and prevention as required by the FI(TR)R.

7.2.5 A copy of the examination form for a law firm's financial intermediary activities under section 3 (1) (k) of the FTRA can be found in Appendix C.

7.2.6 The completed evaluation form is discussed with the law firm and thereafter submitted by the auditor to the Commission for evaluation. Those law firms that receive an adverse rating on the routine examination evaluation will be scheduled for a follow-up

examination. This follow-up examination will be conducted by the Commission's Inspection Unit.

7.3 Follow-up Examination

7.3.1 Follow-up examinations are for the express purpose of addressing the inadequacies of the anti-money laundering systems of financial institutions that are revealed through the routine examination process. Thus, the examination will focus on specific areas identified as inadequate during the routine on-site examination.

7.4 Random Examination

7.4.1 In addition to the routine on-site examination law firms are also subject to random examinations which are conducted by the Inspection unit of the Commission through a computer-generated random selection process.

7.4.2 The primary purpose of the random examination is to test the routine audit process.

7.4.3 The process to be followed for a random examination is the same procedure as that for the routine examination process.

7.4.4 In the case of a random examination, a notice will be sent at least one week prior to the examination. This notice will be forwarded to the MLRO or the law firm's management.

7.5 Special Examination

7.5.1 The Commission will conduct an examination of a law firm in "special" circumstances. Such examinations, consistent with the provisions of the FTRA, will seek to determine any infraction of the anti-money laws and the extent of the violation. The basis for special examinations is where a financial institution has violated any provision of the anti-money laundering laws, or where information comes to the knowledge of the Commission that a statutorily designated financial institution is providing financial services despite having advised the Commission to the contrary.

7.5.2 Depending on the nature of the circumstances which give rise to invoking this approach, the procedure may be either a full examination as in the case of a routine examination process, or a specific investigation directed towards a specific issue**.**

8. On-site examinations for financial and corporate service provider licensees

8.1 Where a law firm that is a financial institution for certain of its activities under the FTRA also holds a financial and corporate service providers licence, (whether in its own name or through a company established specifically for that purpose), the business that is performed pursuant to the licence is also subject to an annual on-site examination under section 12 (3) (b) of the Financial and Corporate Service Providers Act, 2000.

8.2 To minimise disruption to such a firm, both the Commission and the Inspector of Financial and Corporate Service Providers have agreed that the Commission would assume responsibility for the administration of the examination process for such licensees. The examination process is the same used by the Commission as set out above.

8.3 The examination year for such licensees is also from **1st August** to **31st July** in the following year. The examination form to be completed for the licensed activities can be found in **Appendix D.**

N.B. It is important to note that the examination form is in two parts, sometimes referred to as the "combined form". The first part deals with obligations which are imposed by the FCSPA, whilst the second part deals with obligations which the licensee has under the FTRA (section 3 (1) (j). Where a licensee does not provide services to its clients that involves facilitating the movement of funds, into, around or out of the financial system, ONLY the first part of the form needs to be completed.

Law firms that are financial institutions under section 3 (1) (k), which are also financial and corporate service provider licensees must therefore complete both the examination form for law firms found at Appendix C, as well as the combined form as a financial and corporate service provider licensee found at Appendix D.

8.4 Law firms that must have both examinations carried out are encouraged to organise these to occur at the same time.

9. Periodic self-audits of AML system

9.1 On a regular basis lawyers in relation to their financial intermediary services must verify compliance with policies, procedures, and controls to counter money-laundering activities. Larger law firms may wish to assign this role to their Internal Audit or Compliance division. Smaller law practices may accomplish the same objective by introducing a regular review by management. A self-assessment based on the on-site examination forms found at Appendices C and D, as appropriate, may be used to satisfy this obligation. Such periodic testing and auditing of their anti-money laundering policies, procedures and controls must take place at least once per year.

9.2 In the case of sole practitioners such testing is satisfied through the annual routine on-site examination.

IV VERIFICATION OF IDENTITY PROCEDURES (KYC RULES)

10. General Duty to Verify identity

10.1 A law firm should establish to its satisfaction that it is dealing with a legitimate person (natural, corporate or legal) and verify the identity of those persons who have authority to conduct business through any facility provided. Whenever possible, the prospective customer should be interviewed personally.

10.2 Subject to the exemptions and exceptions set out in sections 12 & 13 below, law firms have a mandatory obligation to verify identity in the following circumstances:

(1) Existing Facility holders

- All existing facility holders of record as at 1st January 2001. The deadline for verification of this group is 31st December 2002. **[NB: If at the end of the period for verification the financial institution is still unable to verify the identity of the client, the financial institution must transfer or assign the facility to The Central Bank of The Bahamas.]**

- Where doubt arises in relation to any facility holder during the course of the business relationship, a verification of the facility holder must be undertaken.

(2) New Facility holders

- Before establishing a new facility, all persons authorised to operate the facility must be verified.

- Before **adding someone as a facility holder to an existing facility**, that person must be verified.

(3) Persons who seek to conduct a transaction with the firm via existing facilities involving cash in excess of $10,000 (an occasional transaction) and the transactor is not a client in relation to any financial intermediary services provided by the firm or is conducting the transaction on behalf of someone who is not.

- Where a person, who cannot be regarded as a client facility holder, seeks to conduct an occasional transaction in relation to any facility, that person must be verified before such transaction is permitted.

- Where a person, who is not a client in relation to the subject facility seeks to conduct **an occasional transaction (cash) on behalf of another** who is also not a facility holder of the firm. In addition to the transactor being verified the person on whose behalf he is acting must also be verified.

- Where a client facility holder seeks to **use his own facility, which is provided by the law firm to conduct occasional transactions on behalf of others**, (this is most commonly the case for intermediaries such as real estate brokers), those others must be verified.

- Where structuring of an occasional transaction is suspected to be taking place. (See Figure 3 below for an explanation of a structuring).

Fig. 3

What is structuring?

Structuring transactions as a means of avoiding having to provide verification evidence is a practice known in money laundering schemes. This structuring variously referred to as "linked" transactions or "smurfing" presents special challenges for verification ***prior*** to the transaction being conducted. For this reason there is a need in some cases to aggregate linked transactions to identify those who might structure their business to avoid the identification procedures.

There is no legal requirement to establish additional systems specifically to identify and aggregate linked transactions. However, where a law firm detects that two or more cash transactions by or on behalf of someone who is not the firm's facility holder, have totalled more than $10,000, and it has reasonable grounds to suspect that this was intentionally done to avoid meeting the $10,000 threshold that would require verification, then this information must be acted upon as soon as practicable after the lawyer/law firm forms that conclusion. The law firm/lawyer is then under an obligation to verify the identity of the person seeking to conduct any other related transaction.

The attempt to transact the linked activities must be in relation to the firm's financial intermediary services, which generates the obligation to verify identity.

This requirement exists whether or not the person conducting the transaction is doing so for himself, on behalf of someone else, or in concert with others.

Timing of verification in structured transactions

Verification of identity in a structured transaction must take place as soon as reasonably practicable after concluding that structuring is taking or has taken place.

Where the person conducting the transaction under a structured arrangement is doing so through his own facility as an intermediary on behalf of someone else, the law firm must verify the identity of that other person as soon as reasonably practicable after concluding that structuring is taking or has taken place.

Indications that transactions are being structured

In determining whether or not any transactions are or have been structured to avoid the verification procedure the law firm shall take into consideration the following factors:

(a) the time frame within which the transactions are conducted; and

(b) whether or not the parties to the transactions are the same person, or are associated in any way.

11. Verification Evidence

11.1 Subject to the provisions for exemptions and exceptions set out below in sections 12 and 13, the following evidence must be on record for every facility or occasional transaction that has to be verified.

11.2 Individuals

Full and correct name, permanent address, telephone and fax number, date and place of birth, nationality, occupation and name of employer (if self-employed, the nature of the self-employment), copy of relevant pages of passport, national identity card, voter's card, driver's licence or any other photographic identification; signature; purpose of the account and potential account activity; source of funds; written confirmation that all credits to the account are and will be beneficially owned by the facility holder, except in the case of an account that will be an intermediary account as the beneficial ownership identification will have to be filled out separately; and such documentary or other evidence as is reasonably capable of establishing the identity of the person.

11.3 Corporate bodies

Certified copy of the certificate of incorporation; certified copy of the Memorandum and Articles of Association (or equivalent)[2]; location of the registered office or agent; resolution of the Board of Directors authorising the opening of the account and conferring authority on the person who will operate the account; confirmation that the entity has not been struck off the register or is not in the process of being wound up; names and addresses of all officers and directors; names and addresses of all beneficial owners; description and nature of the business including date of commencement of business, products or services provided and location of principal business; purpose of the account and the potential parameters of the account including size, in the case of investment and custody accounts, balance ranges, in the case of deposit accounts and the expected transaction volume of the account; written confirmation that all credits to the account are and will be owned by the facility holder except in the case of an account that will be an intermediary account as the beneficial ownership identification will have to be filled out separately; and such other official document and other information as is reasonably capable of establishing the structural information of the corporate entity.

NB. References to '"account" in relation to verification evidence in the case of a law firm should be construed to mean the facility or financial intermediary service that is being provided to the client facility holder.

11.3.1 The law firm should verify the legal existence of the applicant company and ensure that any person purporting to act on behalf of the company is fully authorised. The principal requirement is to look behind the corporate entity and obtain the names and addresses of beneficial owners, except in those cases where an exemption or exception

[2] In the case of a Bahamian incorporated company, if the law firm has, as part of the files, the documents of incorporation (e.g. certificate, Memorandum and Articles of Association) bearing an original seal of the Registrar General this would be sufficient to meet this obligation.

applies (see sections 12 and 13 below). Enquiries should also be made to confirm that the company exists for a legitimate trading or economic purpose and that it is not merely a "brass plate company" where the controlling principals cannot be identified.

11.3.2 Before a facility is established, a company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated, should be carried out.

11.3.3 If changes to the company structure or ownership occur subsequently, or if suspicions are aroused by a change in the nature of the business transacted or the profile of payments on behalf of a company, further checks should be made to ascertain the reason for the changes.

11.3.4 In appropriate cases for established businesses, a copy of the latest report and accounts (audited where applicable) should be obtained.

11.3.5 A search of the file at the Companies Registry is advisable or an enquiry via a business information service or an undertaking from a firm of lawyers or accountants confirming that the constituent documents have been submitted to the Registrar of Companies.

11.3.6 When signatories to the facility change, care should be taken to ensure that the relevant authorisation from the company as well as the full name and adresses of such are obtained for the file. In addition, it may be appropriate to make periodic enquiries to establish whether there have been any changes to directors/shareholders or to the original nature of the business/activity. Such changes could be significant in relation to potential money laundering activity even though authorised signatories have not changed.

11.3.7 *Additional due diligence in the case of foreign companies:* Because standards of control vary between different countries careful attention should be paid to the place of origin of the documents and the background against which they are produced. Where appropriate certified English translations of these documents should be obtained.

11.4 Partnerships and other unincorporated associations/businesses

Verification of all partners or beneficial owners as individuals; copy of partnership agreement (if any) or other agreement establishing the unincorporated business; description and nature of the business including the date of commencement of the business, products or services provided and location of principal place of business; purpose and potential parameters of the account including size in the case of investment and client accounts, balance ranges in the case of deposit and client accounts and the expected transaction volume of the account; mandate from the partnership or beneficial owner authorising the opening of the account and conferring authority on those who will operate the account; written confirmation that all credits to the account are and will be beneficially owned by the facility holder except in the case of an account that will be an intermediary account as the beneficial ownership identification will have to be filled out separately; and such documentary or other evidence as is reasonably capable of establishing the identity of the partners or beneficial owners.

11.4.1 Each partner or beneficial owner of the entity (as the case may be) must be verified as an individual in accordance with paragraph 11.2 above.

11.4.2 In the case of facilities to be opened for partnerships, clubs, societies and charities and other entities which are not incorporated, a law firm should satisfy itself as to the legitimate purpose of the entity by requesting sight of the constitution or bye-laws, partnership agreement etc., as the case may be, and a copy thereof placed on the file. The names and addresses of all signatories to the facility should be verified initially, as well as a written mandate from the facility holders for the signatories to act on their/its behalf. In addition when signatories change, care should be taken to ensure that this information is obtained before any new signatory is permitted to conduct business on behalf of the facility holder.

11.5 Facilities/Accounts for Intermediaries[3].

11.5.1 In addition, where the facility is held by a person as an intermediary on behalf of another or others, those others unless exempted must also be verified in accordance with the above specifications.

Trusts, Nominees And Fiduciaries

11.5.2 The use of trusts, nominee and fiduciary arrangements are a popular vehicle for money laundering. Particular care needs to be exercised when these arrangements have been set up in locations with strict secrecy or confidentiality rules regarding disclosure of beneficial and other such information. Trusts created in jurisdictions not listed in the First Schedule of the FTRA (see Appendix B) will warrant additional enquiries.

11.5.3 Verification of the identity of the settlor and beneficial owner of the funds, the provider of the funds, and of any controller or similar person having power to appoint or remove the trustees or fund managers and the nature and purpose of the trust must be available to the FIU, law enforcement and the relevant agencies in the event of an enquiry. Law Firms should therefore verify the true identity of the underlying principals and should also obtain written confirmation from the trustees/managers of the trust that there are no anonymous principals.

11.5.4 Trustees/nominees should be asked to state from the outset the capacity in which they are operating or making the application. Sight of certified extracts covering the appointment and powers of the trustees from/or the original trust deed, and any subsidiary deed evidencing the appointment of current trustees, should also be obtained.

11.5.5 Verification of identity of the settlor and any underlying beneficiary is required. Any application to become a facility holder or undertake a transaction on behalf of another, without the applicant identifying their trust or nominee capacity, should be regarded as suspicious and should lead to further enquiries.

11.5.6 Where a person who makes a request to become a facility holder or to undertake a transaction is a professional adviser, business or company acting as trustee or nominee in relation to a third party, the law firm must verify the identity of the trustee, nominee or fiduciary and the nature of their trustee or nominee capacity or duties. Enquiries should be made as to the identity of all parties for whom the trustee or nominee is acting including the settlor and any beneficiaries (except where an occasional transaction is being conducted on the beneficiary's behalf) and confirmation sought that the source of funds or assets under the trustee's control are from a legitimate source.

[3] Regulation 3 (2), FTRR.

11.5.7 Measures to obtain the information concerning the underlying beneficiary will need to take account of legal constraints and/or good market practice in the respective area of activity, the geographical location of the trustees and beneficiaries to which the trust facility relates and, in particular, whether it is normal practice in those areas or markets to operate on behalf of undisclosed principals. Trusts created in poorly regulated jurisdictions may warrant additional enquiries.

11.5.8 Where money is received by a trust, it is important to ensure that the source of the funds is properly identified, the nature of the transaction is understood, and payments are made only in accordance with the terms of the trust and are properly authorised in writing.

12. Exemptions from the obligation to obtain full verification documentation

12.1 Outright exemptions

12.1.1 A law firm is exempted from having to obtain full documentary evidence (in accordance with section 11 for customer verification on the following facility holders, **although the files should contain adequate documentation and relevant copies as evidence in satisfaction of any claim for exemption, in addition to documentation attested to by the client regarding the purpose, use, parameters, potential activity scope and source of funds with respect to the facility**:

12.1.2 The exemption applies to:

- Central or local government agency, statutory body. The file should contain evidence from a sufficiently senior authority in Government or the relevant statutory body authorizing the establishment and operation of the facility.
- Occupational Pension Schemes registered under the Superannuation and other Trusts (Validation Scheme) Act which do not allow public participation[4].
- Licensed Bahamian Bank or one from a country listed in Appendix B.
- Licensed Bahamian Trust Company or one from a country listed in Appendix B.
- Licensed Bahamian Casino or one from a country listed in Appendix B.
- Any entity regulated (including a regulated mutual fund) by the Securities Commission or its equivalent Regulator from a country listed in Appendix B.
- Any entity regulated by the Registrar of Insurance or its equivalent Regulator from a country listed in Appendix B.
- A publicly traded company or mutual fund listed on the Stock Exchanges set out in Appendix B.
- A beneficiary under a discretionary trust where a Trustee seeks, on behalf of such beneficiary, to conduct a cash transaction over $10,000 (occasional transaction) with the firm in relation to any financial intermediary services provided by the firm, and the firm is reasonably satisfied that, within this

[4] Section 2, FTRA

context the Trustee is acting for a beneficiary or beneficiaries under a discretionary trust[5].

12.1.3 To satisfy the record-keeping obligations where an exemption is claimed the file should include in appropriate cases, a copy of the relevant certificate or license or such similar document that supports the exempt status.

Regulated Financial Institutions

12.1.4 For regulated financial institutions, it is recommended that the confirmation of its existence and regulated status be checked by the following means:

- checking with the relevant regulator or supervisory body;
- checking with another office, subsidiary or branch in the same country;
- checking with a regulated bank of the institution if it is an overseas institution; and
- obtaining from the relevant institution evidence of its licence or authorisation to conduct the financial intermediary service business with the firm.

12.2 Verification evidence obtained on an earlier occasion that continues to be reasonably capable of establishing the identity of the verification subject

12.2.1 A law firm can rely on verification evidence obtain on an earlier occasion where it has reasonable grounds to believe that such evidence is still reasonably capable of establishing the identity of a person, in accordance with the requirements set out in section 11.

12.3 Closing and opening a facility with the same institution (transfer of records)

12.3.1 If an existing facility holder closes one facility and establishes another with the same law firm, there is no need to verify identity afresh but existing records should be transferred to the new facility. However, the opportunity should be taken to confirm the relevant customer verification information. This is particularly important if there has been no recent contact or correspondence with the customer or when a previously dormant facility has been reactivated.

12.4 Where the primary obligation to verify is satisfied by a verification conducted by an eligible introducer financial institution (Reliable Introductions).

12.4.1 An eligible introducer is any one of the following:

- Licensed Bahamian bank or one from a country in Appendix B.
- Licensed Bahamian trust company or one from a country in Appendix B.
- Licensed Bahamian casino or one from a country in Appendix B.
- Any person regulated by the Securities Commission of The Bahamas or its equivalent from a country in Appendix B.

[5] Section 10, FTRA

- Any life insurance company regulated by the Registrar of Insurance or its equivalent from a country Appendix B.

12.4.2 In the case of facilities eligible introductions are permitted in the following circumstances-

a. *Establishment of facilities by telephone, Internet or post.*

A law firm can establish a facility by means of telephone, Internet or post where a letter of introduction stipulating that the eligible introducer has verified the prospective client is provided by any of the entities listed in the previous paragraph. If the client has been introduced by this means an original letter on file should reflect this fact.

b. *Arrangements Between Existing Facilities*

In the case of arrangements between two facilities which accommodate the conduct of transactions between them (whether held by the same or different financial institutions), the duty to verify identity is met once all such steps as are reasonably necessary to confirm the existence of the other facility have been taken. For example, where a client engages the services of a law firm to receive periodic deposits on its behalf from an account it (the client) has at an eligible introducer bank, the law firm may rely on the fact that it has confirmed the existence of such a facility, to discharge it's primary obligation to verify. The records to be maintained in this situation are those that are reasonably necessary to enable the identity of the other eligible introducer (in this case the bank), the identity of the facility and the identity confirmation of the person.

c. *Corporate Group Introductions*

Reliance may be placed on the verification carried out by another law firm of a group that is a subsidiary or parent of which a law firm is a member and which is subject to an AML group policy, that is strictly adhered to, and which is at least consistent with the standards provided by Bahamian law, for the purpose of introducing a prospective client wishing to establish a facility in The Bahamas.

12.4.3 If a facility has been established by any of the foregoing means, there is no need to carry out an independent verification of the client. However the law firm is still obliged to ascertain directly from the client details regarding the source of income/funds, purpose, use, potential activity and other parameters for the operation of the facility, and document these.

12.5 In the case of cash transactions above $10,000 by or on behalf of non-facility holders (occasional transactions)-

Letters of confirmation

12.5.1 Letters of Confirmation may be used to satisfy the primary obligation on a law firm to verify identity, where cash above $10,000 is involved in a transaction being conducted by or on behalf of a non-facility holder[6].

12.5.2 Only eligible introducers can issue letters of confirmation, i.e.:

- Licensed Bahamian bank or one from a country in Appendix B.
- Licensed Bahamian trust company or one from a country in Appendix B.
- Licensed Bahamian casino or one from a country in Appendix B.
- Any person regulated by the Securities Commission or its equivalent from a country in Appendix B.
- Any life insurance company regulated by the Registrar of Insurance or its equivalent from a country in Appendix B.

12.5.3 The circumstances involving cash of $10,000 or more in which reliance may be placed on a letter of confirmation that another eligible introducer financial institution has carried out the required verification are as follows:

a) where a deposit is made into a facility that is provided for the law firm by an eligible introducer financial institution and the law firm is unable to determine if such a deposit involved cash of $10,000 or more. E.g. if a facility holder client makes a deposit directly into a bank account of the law firm, then the law firm can rely on written confirmation from the bank that it (the Bank) had carried out the verification of the person making the deposit.[7]

b) reliance can be placed on written confirmation of an eligible introducer e.g. a bank, which conducts a cash transaction of $10,000 or more on behalf of another person with the law firm that it (the bank) has carried out the required verification on the party on whose behalf it is acting.[8]

c) a law firm can rely on a written confirmation from an eligible introducer (e.g. a bank) that it (the bank) has carried out the required verification on a non-facility holder who has conducted a cash transaction over $10,000 with the law firm by means of a facility which that verification subject has with the bank. The records to be kept in such eventuality should indicate:

- the identity of the eligible introducer,
- the identity of that facility, and
- the identity confirmation of the person.[9]

[6] Sections 7, 8, 9 & 11.

[7] Section 7 (2) (b), FTRA

[8] Section 8 (6), FTRA

[9] Section 11 (4), FTRA.

13. Verification When Providing Safe Custody And Safety Deposit Boxes

13.1. Particular precautions need to be taken in relation to requests to hold boxes, parcels and sealed envelopes in safe custody. Where such facilities are made available to non-clients, the identification procedures set out in this Code should be followed.

14. Miscellaneous general guidance tips on verification

14.1 Confirmation Of Identity By Other Financial institutions

14.1.1 The primary duty to verify identity using the best evidence and means available rests with the law firm. However, in exceptional circumstances, a law firm may wish to approach an eligible introducer, specifically for the purpose of satisfying itself on a verification of identity that it must complete. In these exceptional circumstances the standard format set out in Appendix F should be used for making the enquiry.

14.2 Additional means of identification for Non-resident clients

14.2.1 A useful means of identification for non-residents is a social security, social insurance or national insurance number. Law firms are encouraged to record such information as part of any client profile.

14.3 Verifying Address

14.3.1 In addition to the name verification, it is important that the current permanent address should also be verified. Any current documentation or identification issued by a valid government or public authority may be relied on to establish this. It is sufficient for the officer or employee conducting the verification to certify that he has seen and is satisfied with the evidence relied upon to verify the address. It is not necessary to keep copies of documentation that establishes the permanent address, just for that purpose.

15. Monitoring of Facilities

15.1 Although the regulations require law firms to regularly monitor facility holders for consistency with stated facility purposes and business and the identified potential facility activity during the first year of operation of the facility, law firms are expected to maintain systems and controls in place to monitor on an ongoing basis the relevant activities in the course of the business relationship. The nature and sophistication of this monitoring will depend on the nature of the business. The purpose of this monitoring is for law firms to be vigilant for any significant changes or inconsistencies in the pattern of transactions. Inconsistency is measured against the stated original purpose of the accounts. Possible areas to monitor could be: -

(a) transaction type
(b) frequency
(c) amount
(d) geographical origin/destination
(e) account signatories

15.2 It is recognised that the most effective method of monitoring of facilities is achieved through a combination of computerised and human manual solutions. A corporate compliance culture, and properly trained, vigilant staff through their day-to-day dealing with customers, will form an effective monitoring method as a matter of course.

15.3 Where there has been no recent contact with the facility holder or no transaction involving the facility within a period of 5 years, and the facility has not been closed out, the law firm is required, by law, to verify the identity of the facility holder.

V RECORD KEEPING

16. Statutory Requirements to maintain records

16.1 Law firms are required to retain records concerning customer identification and transactions for use as evidence in any investigation into money laundering. This is an essential constituent of the audit trail procedures. Often the only significant role a financial institution can play in a money laundering investigation is through the provision of relevant records, particularly where the money launderer has used a complex web of transactions specifically for the purpose of confusing the audit trial. The objective of the statutory requirements detailed in the following paragraphs is to ensure, in so far as is practicable, that in any subsequent investigation the law firm can provide the authorities with its section of the audit trail.

16.2 Where an obligation exists to keep records, copies of the relevant documentation are sufficient, unless the law specifically requires otherwise. It is important that the law firm satisfies itself that copies are reproductions of the original documentation. The files should also indicate, in relevant circumstances, where the original can be located.

16.3 The records prepared and maintained by any law firm on its customer relationships and transactions should be such that:

- requirements of legislation are fully met;
- competent third parties will be able to assess the firm's observance of money laundering policies and procedures;
- any transactions effected via the firm can be reconstructed; and
- the firm can satisfy within a reasonable time any enquiries or court orders from the appropriate authorities as to disclosure of relevant information.

17. Verification Records

17.1 Sections 11 through 14 set out the evidence to be obtained for verification of identity.

17.2 For the purpose of verifying the identity of any person, a law firm must keep such records as are reasonably capable of enabling the FIU to readily identify the nature of the evidence used for the verification.

17.3 Verification records to be kept for a minimum period of five (5) years

17.3.1 Records relating to the verification of the identity of facility holders must be retained for 5 years after the person ceases to be a facility holder.

17.3.2 Where a firm verifies the identity of any person by confirming the existence of a facility provided by an eligible introducer financial institution, the records that must be retained are such that enable the FIU to identify, at any time, the identity of the eligible introducer financial institution, the identity of the relevant facility and the identity confirmation documentation of the verification subject.

17.3.3 Records relating to the verification of the identity for any transaction conducted through a facility of an intermediary must be kept for a period of not less than 5 years after the intermediary ceases to the facility holder.

17.3.4 In relation to any other person, records relating to the verification of the identity of any person must be kept for a period of not less than 5 years after the verification was carried out.

17.3.5 In keeping with best practices the date when a person ceases to be a facility holder is the date of:

i) the carrying out of a one-off transaction or the last in the series of transactions; or,

ii) the ending of the business relationship, i.e., the closing of the facility; or,

iii) the commencement of proceedings to recover debts payable on insolvency.

17.3.6 Where formalities to end a business relationship have not been undertaken, but a period of 5 years has elapsed since the date when the last transaction was carried out, then the five-year retention period commences on the date of the completion of the last transaction.

17.3.7 Where records relate to on-going investigations, they must be retained until it is confirmed by the FIU or local law enforcement agency that the case has been closed.

18. Transaction Records

18.1 The investigating authorities also need to be able to establish a financial profile of any suspect facility. For example, information on the beneficial owner of the facility and any intermediaries involved as well as the volume of funds flowing through the facility may be sought as part of an investigation into money laundering. Further in the case of selected transactions information may be required on the origin of the funds (if known); the form in which the funds were offered or withdrawn, i.e., cash, cheques, etc.; the identity of the person undertaking the transaction; the destination of the funds; and, the form of instruction and authority.

18.2 The transaction records which must be kept must include the following information:

- the nature of the transaction;
- the amount of the transaction, and the currency in which it was denominated;
- the date on which the transaction was conducted;
- the parties to the transaction; and
- where applicable, the facility through which the transaction was conducted, and any other facilities (whether or not provided by the law firm) directly involved in the transaction.

18.3 <u>Transaction records to be kept for a minimum period of five (5) years</u>

18.3.1 Transaction records must be kept for a minimum period of five years after the transaction has been completed, subject to the extended requirements set out in paragraph 17.3.7 above.

19. When records need not be kept

19.1 Records need not be kept where a law firm, being a company has been liquidated and finally dissolved, or, being a partnership, the partnership has been legally dissolved.

20. Destruction of Records

20.1 The records and any copies thereof, maintained pursuant to the FTRA must be destroyed as soon as practicable after the expiration of the retention period, unless required to be maintained beyond this period by any law, for the business purposes of the law firm, or for investigative purposes by law enforcement or the FIU.

21. Format of Records

21.1 Retention of verification and transaction records may be by way of original documents, stored on microfiche, computer disk or in other electronic form.

VI RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

22. The Financial Intelligence Unit (FIU)

22.1 The national agency for receiving suspicious transaction reports is the Financial Intelligence Unit, Norfolk House, Frederick Street, P.O. Box SB-50086, Nassau, The Bahamas, Telephone No. (242) 356-9808 or (242) 356-6327, Fax No. (242) 322-5551.

22.2 In addition the FIU has power to compel production of information (except information subject to legal professional privilege), which it considers relevant to fulfill its functions.

22.3 It is an offence to fail or refuse to provide the information requested by the FIU. Such offence is punishable on summary conviction to a fine not exceeding $50,000 on to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

23 The Money Laundering Reporting Officer (MLRO)

23.1 All law firms engaged in financial intermediary services are required to appoint a Money Laundering Reporting Officer (MLRO) as the point of contact with the Financial Intelligence Unit (FIU), in order to handle reports of money laundering suspicions by their staff.

23.2 ***The MLRO must be registered with the FIU***. Law firms should ensure that any changes in this post are immediately notified to the FIU and the Commission.

23.3 <u>The Role of the MLRO</u>

23.3.1 The type of person appointed as Money Laundering Reporting Officer will depend on the size of the firm and the nature of its business, but he should be sufficiently senior to command the necessary authority. Larger firms may choose to appoint a senior member of their compliance, internal audit or fraud departments. In small firms, it may be appropriate to designate the office administrator, the sole practitioner or one of the partners. When several subsidiaries operate closely together within a group, designating a single Money Laundering Reporting Officer at group level is an option.

23.3.2 The MLRO is required to determine whether the information or other matters contained in the transaction report he has received give rise to a knowledge or suspicion that a customer is engaged in money laundering.

23.3.3 In making this judgment, the MLRO should consider all other relevant information available within the law firm concerning the person or business to whom the initial report relates. This may include a review of other transaction patterns and volumes through the account or accounts in the same name, the length of the business relationship, and referral to identification records held. If, after completing this review, he decides that the initial report gives rise to a knowledge or suspicion of money laundering, then he must disclose this information to the FIU.

23.3.4 The "determination" by the MLRO implies a process with at least some formality attached to it, however minimal that formality might be. It does not necessarily imply that he must give his reasons for negating, and therefore not reporting any particular matter, but it clearly would be prudent, for his own protection, for internal procedures to require that only written reports are submitted to him and that he should record his determination in writing, and the underlying reasons therefor.

23.3.5 The MLRO will be expected to act honestly and reasonably and to make his determinations in good faith.

24. The Compliance Officer

24.1 A law firm is also required to appoint a Compliance Officer. However a law firm may choose to combine the roles of the Compliance Officer and the MLRO depending upon the size and nature of financial intermediary services that it is involved in.

25. Recognition of Suspicious Transactions

25.1 A suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of facility. Therefore, the first key to recognition is knowing enough about the customer's business to recognise that a transaction, or series of transactions, is unusual. Efforts to recognize suspicious circumstances should commence with the request to open a facility or execute the initial transaction.

26. Internal Reporting of Suspicious Transactions

26.1 The Financial Intelligence (Transactions Reporting) Regulations, 2001 requires law firms to establish clear responsibilities and accountabilities to ensure that policies, procedures, and controls which deter criminals from using their facilities for money laundering, are implemented and maintained.

26.2 All law firms offering financial intermediary services operating and within or from The Bahamas are required to:

i. introduce procedures for the prompt investigation of suspicions and subsequent reporting to the FIU;

ii. provide the MLRO with the necessary access to systems and records to fulfill this requirement;

iii. establish close co-operation and liaison with the FIU and the Commission).

26.3 There is a statutory obligation on all staff (subject to a lawyer's legal privilege – see section 28 below) to report suspicions of money laundering to the MLRO in accordance with internal procedures. However, in line with accepted practice some law firms may choose to require that such unusual or suspicious transactions be drawn simultaneously to the attention of supervisory management to ensure that there are no known facts that will negate the suspicion.

26.4 All law firms have a clear obligation to ensure:

- that each relevant employee knows to which person he or she should report suspicions; and,
- that there is a clear reporting chain under which those suspicions will be passed without delay to the MLRO.

26.5 Once an employee has reported his suspicion to the MLRO he has fully satisfied the statutory obligation.

27. Procedure for Reporting Suspicious Transactions to the FIU

27.1 The form at Appendix G should be used for reporting suspicious transactions to the FIU, and the information must be typed. These disclosures can be forwarded to the FIU in writing, by post, by facsimile message or by electronic mail, and in cases of urgency reports may be made orally.

27.2 Sufficient information should be disclosed which indicates the nature of and reason for the suspicion. Where the law firm has additional relevant evidence that could be made available, the nature of this evidence should also be clearly indicated.

27.3 The receipt of a disclosure will be acknowledged by the FIU. Normally, completion of a transaction will not be interrupted. However, in exceptional circumstances, such as the imminent arrest of a client and consequential restraint of assets, the law firm will be required to discontinue the transaction or cease activity related to the client's facility.

27.4 Following receipt of a disclosure and initial research by the FIU, if appropriate, the information disclosed is allocated to financial investigation officers in the FIU for further investigation. This is likely to include seeking supplementary information from the law firm making the disclosure, and from other sources. Discreet enquiries are then made to confirm the basis for suspicion. The client is not approached in the initial stages of investigating a disclosure and will not be approached unless criminal conduct is identified.

27.5 Access to the disclosure is restricted to financial analysts and other officers within the FIU.

27.6 It is also recognised that as a result of a disclosure, a law firm may leave itself open to risks as a constructive trustee if moneys are paid away other than to the true owner. The law firm must therefore make a commercial decision as to whether funds which are the subject of any suspicious report (made either internally or to the FIU) should be paid away under instruction from the facility holder.

27.7 Law firms are reminded that reporting to the Commission, the Central Bank, the Commissioner of Police and any duly authorised employee of the law firm will be accorded similar protection against breach of confidentiality. It is therefore recommended that to reduce the risk of constructive trusteeship when fraudulent activity is suspected, and to obtain the fastest possible FIU response, disclosure should be notified by telephone and the disclosure form forwarded to the FIU. Where timing is believed to be critical, a law firm should prepare a back up package of evidence for rapid release on the granting of a Court Order, search warrant, or a freezing order pursuant to the Financial Intelligence Unit Act, 2000, Section 4(2)(c).

27.8 Following the submission of a disclosure report, a law firm is not precluded from subsequently terminating its relationship with the client provided it does so for commercial or risk containment reasons and does not alert the client to the fact of the disclosure which would constitute the offence of tipping off under the FTRA. However, it is recommended that before terminating a relationship in these circumstances, the reporting institution should liaise directly with the investigation officer in the FIU to ensure that the termination does not tip off the customer or prejudice the investigation in any other way.

28. Preservation of Legal Privilege in relation to reporting suspicious transactions.

28.1 The statutory obligation under the FTRA on staff to report a suspicious transaction does not require any counsel and attorney to disclose any privileged communication[10].

28.2 Communication (whether oral or written) is deemed to be privileged only if–

(a) ***firstly***, it is confidential and passing between a counsel and attorney in his professional capacity and another counsel and attorney in such capacity; or between a counsel and attorney in his professional capacity and his client, whether directly or indirectly through an agent of either;

(b) ***secondly***, it is communicated or given to a counsel and attorney by, or by a representative of, a client of his in connection with the giving by the counsel and attorney of legal advice to the client;

(c) ***thirdly***, it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(d) ***finally***, it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

28.3 **N.B <u>Legal privilege is not applicable to books, accounts, records, statements and other financial information pertaining to financial transactions and clients' individual accounts for financial intermediary services</u>**.

28.3.1 For the purposes of reporting a suspicious transaction to the FIU, information is not considered privileged where it consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure or financial transactions of a specified person (whether a counsel and attorney, his or her client or any other person). Nor is such information considered privileged if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the counsel and attorney in connection with a client's account of the counsel and attorney.

29. Feedback From The Investigating Authorities

29.1 The provision of general feedback to the financial sector on the volume and quality of disclosures and on the levels of successful investigations arising from the disclosures will be provided on a regular basis through the FIU.

29.2 Where applicable law firms should ensure that all contact between particular departments/branches with the FIU and law enforcement agencies is reported back to the MLRO so that an informed overview of the situation can be maintained. In addition, the FIU will continue to provide information on request to a disclosing institution in order to establish the current status of a specific investigation.

[10] See section 17 of FTRA.

VII EDUCATION AND TRAINING

30. The Need for Staff Awareness

30.1 Law firms must take appropriate measures to familiarise their employees with:

i. policies and procedures put in place to detect and prevent money laundering including those for identification, record keeping and internal reporting, and any legal requirements in respect thereof; and

ii training programmes in the recognition and handling of suspicious transactions.

30.2 Staff must be aware of their own personal statutory obligations and that they can be personally liable for failure to report information in accordance with internal procedures. All staff should be encouraged to co-operate fully and to provide a prompt report of any suspicious transactions without fear of reprisal.

30.3 It is, therefore, important that law firms covered by this Code introduce adequate measures to ensure that staff members are fully aware of their responsibilities.

31. Education And Training Programmes

31.1 Timing and content of training for various sectors of staff will need to be adapted by individual firms for their own needs. It will also be necessary to make arrangements for refresher training at regular intervals, i.e., at least annually to ensure that staff members do not forget their responsibilities. The Commission will host a number of AML training seminars annually for its constituents. The following training guideline is recommended:

31.2 <u>New Employees</u>

31.2.1 A general appreciation of the background to money laundering, and the subsequent need for reporting of any suspicious transactions to the MLRO should be provided to all new employees who will be dealing with clients or their transactions, irrespective of the level of seniority, within the first month of their employment. They should be made aware of the importance placed on the reporting of suspicions by the organisation, that there is a legal requirement to report, and that there is a personal statutory obligation in this respect. They should also be provided with a copy of the written policies and procedures in place in the firm for the reporting of suspicious transactions.

31.3 <u>Frontline Staff that deal directly with the public for the purpose of receiving and making payments, deposits etc., such as cashiers/ accounts officers.</u>

31.3.1 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 organisation's reporting system for such transactions. Training should be provided on factors that may give rise to suspicions and on the procedures to be adopted when a transaction is deemed to be suspicious.

31.3.2 All front line staff should be made aware of the business policy for dealing with non-clients, even those that wish to conduct a transaction in relation to a client facility

holder, particularly where large cash transactions, travelers cheques or postal money orders are involved, and of the need for extra vigilance in these cases.

31.3.3 In addition, further training should be provided in respect of the need to verify a customer's identity and on the business' own facility creation and customer/client verification procedures. They should also be familiarised with the firm's suspicious transaction reporting procedures.

31.4 Administration/Operations Supervisors and Managers

31.4.1 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 in the foregoing categories. This will include the offences and penalties arising from the Proceeds of Crime Act, 2000 and the Financial Transactions Reporting Act, 2000 for non-reporting and for assisting money launderers; procedures relating to the service of production and restraint orders; internal reporting procedures; and, the requirements for verification of identity, the retention of records, and disclosure of suspicious transaction reports under the Financial Intelligence Unit Act, 2000.

31.5 Money Laundering Reporting Officers/Compliance Officers

31.5.1 In-depth training concerning all aspects of the legislation and internal policies will be required for the MLRO. In addition, the MLRO will require extensive initial and on-going instruction on the validation, investigation and reporting of suspicious transactions and on the feedback arrangements and on new trends and patterns of criminal activity.

SUMMARY OF EXISTING BAHAMIAN LAW ON MONEY LAUNDERING

The Proceeds of Crime Act, 2000 (Act No 44 of 2000***)***

This Act criminalises money laundering related to the proceeds of drug trafficking and other serious crimes. This Act also provides for the confiscation of the proceeds of drug trafficking or any relevant offence as described in the Schedule to the Act; the enforcement of confiscation orders and investigations into drug trafficking, ancillary offences related to drug trafficking and all other relevant offences.

The law requires financial institutions to inform the FIU, the Police and other relevant agencies of any suspicious transactions. The Act provides immunity to such persons from legal action by clients aggrieved by the breach of confidentiality. It should be noted that the reporting of suspicious transactions is mandatory and a person who fails to report a suspicious transaction is liable to prosecution.

The Financial Transactions Reporting Act, 2000 (Act No 40 of 2000**)**

The FTRA imposes mandatory obligations on financial institutions to: verify the identity of existing and prospective facility holders and persons engaging in occasional transactions; maintain verification and transaction records for prescribed periods; and to report suspicious transactions, which involve the proceeds of criminal conduct as defined by the Proceeds of Crime Act, 2000 to the Financial Intelligence Unit. This Act also establishes the Compliance Commission, an independent statutory authority which has responsibility fro ensuring that Cooperative Societies and financial institutions that are not otherwise regulated, comply with the provisions of the Act.

The Financial Transactions Reporting Regulations, 2000 (Statutory Instrument No 111 of 2000)

The Financial Transactions Reporting Regulations, 2000, inter alia, sets out the evidence that financial institutions must obtain in satisfaction of any obligation to verify the identity of a client or customer.

The Financial Intelligence Unit Act, 2000 (Act No. 39 of 2000**)**

The Financial Intelligence Unit Act, 2000 establishes the FIU of the Bahamas which has power, inter alia, to obtain, receive, analyse and disseminate information which relates to or may relate to the proceeds of offences under the Proceeds of Crime Act, 2000.

The Financial Intelligence (Transactions Reporting) Regulations 2001 (Statutory Instrument No. 7 of 2001).

The Financial Intelligence (Transactions Reporting) Regulations 2001 require financial institutions to establish and maintain identification, record-keeping, and internal reporting, procedures, including the appointment of a MLRO. These regulations also require financial institutions to provide appropriate training for relevant employees to make them aware of the statutory provisions relating to money laundering.

(1) APPROVED COUNTRIES UNDER THE FIRST SCHEDULE TO FTRA

Countries and territories from which verification by eligible introducer financial institutions may be accepted:-

Australia	Denmark	Isle of Man	Norway
Barbados	Finland	Italy	Panama
Belgium	France	Japan	Portugal
Bermuda	Germany	Leichtenstein	Singapore
Brazil	Gibraltar	Luxembourg	Spain
Canada	Greece	Malta	Sweden
Cayman Islands	Hong Kong SAR	Netherlands	Switzerland
Channel Islands	Ireland	New Zealand	United Kingdom
			United States

(2) APPROVED STOCK EXCHANGES UNDER THE SCHEDULE TO THE FTRR

American Stock Exchange (AMEX)	Milan Stock Exchange (Borsa Valares de Milano)
Amsterdam Stock Exchange (Ainsterdamse Effectenbeurs)	Montreal Stock Exchange
Antwerp Stock Exchange (Effectenbeurs vennootschap van Antwerpen)	Munich Stock Exchange (Bayerische Barse in Miinchen)
Athens Stock Exchange (ASE) Australian Stock Exchange	Nagoya Stock Exchange
Barcelona Stock Exchange (Bolsa de Valores de Barcelona)	Nancy Stock Exchange
Basle Stock Exchange (BaslerBorse)	Nantes Stock Exchange
Belgium Futures & Options Exchange (BELFOX)	Naples Stock Exchange (Borsa Valori di napoli)
Berlin Stock Exchange (Berliner Borse)	NASDAQ (The National Association of Securities Dealers Automated Quotations)
Bergen Stock Exchange (Bergen Bors)	New York Stock Exchange
Bermuda Stock Exchange	New Zealand Stock Exchange
Bilbao Stock Exchange (Borsa de Valores de Bilbao)	Oporto Stock Exchange (Bolsa de Valores do Porto)
Bologna Stock Exchange (Borsa Valori de Bologna)	Osaka Stock Exchange
Bordeaux Stock Exchange	Oslo Stock Exchange (Oslo Bars)
Boston Stock Exchange	Pacific Stock Exchange
Bovespa (Sao Paulo Stock Exchange)	Palermo Stock Exchange (Borsa Valari di Palermo)
Bremen Stock Exchange (Bremener Wertpapierbarse)	Paris Stock Exchange
Brussels Stock Exchange (Societede la Bourse des Valeurs Mobilieres/Effecten Beursvennootschap van Brussel)	Philadelphia Stock Exchange
Cayman Islands Stock Exchange	Rio de Janeiro Stock Exchange (BVRI)
Cincinnati Stock Exchange	Rome Stock Exchange (Borsa Valori di Roma)
Copenhagen Stock Exchange (Kobenhayns Fondsbors)	Singapore Stock Exchange
Dusseldorf Stock Exchange (Rheinsch-westflilische Borse Zu Dusseldorf)	Stockholm Stock Exchange (Stockholm Fondbors)
Florence Stock Exchange (Borsa Valori di Firenze)	Stuttgart Stock Exchange (Baden-Wiirternbergische Wertpapierborse Zu Stuttgart)
Frankfurt Stock Exchange (Frankfurter Wertpapierbarse)	Taiwan Stock Exchange
Geneva Stock Exchange	The Stock Exchange of Thailand
Genoa Stock Exchange (Borsa Valari de Genova)	Tokyo Stock Exchange
Hamburg Stock Exchange (Hanseatische Vertpapier Borse Hamburg)	
Helsinki Stock Exchange (Helsingen Arvapaperiporssi Osuuskunta)	
Hong Kong Stock Exchange	
Fukuoka Stock Exchange	
Irish Stock Exchange	
Johannesburg Stock Exchange	

Korea Stock Exchange Kuala Lumpur Stock Exchange Lille Stock Exchange Lisbon Stock Exchange (Borsa de Valores de Lisboa) London Stock Exchange (LSE) Luxembourg Stock Exchange (Societe de la Bourse de Luxembourg SA) Lyon Stock Exchange Madrid Stock Exchange (Balsa de Valores de Madrid) Marseille Stock Exchange Mexican Stock Exchange (Bolsa Mexicana de Valores) Midwest Stock Exchange	Toronto Stock Exchange Trieste Stock Exchange (Borsa Valori di Trieste) Trondheim Stock Exchange (Trondheims Bors) Turin Stock Exchange (Borsa Valori de Torino) Valencia Stock Exchange (Borsa de Valares de Valencia) Vancouver Stock Exchange Venice Stock Exchange (Borsa Valori de Venezia) Vienna Stock Exchange (Wiener Wertpapierbarse) Zurich Stock Exchange (Ziircher Borse).

COMPLIANCE COMMISSION

On-Site Examination

LAW FIRMS

Financial Transactions Reporting Act 2000

PART I: Particulars of the business

1. Name of Firm …….....….....……

2. Business license no. ……..……..

3a. Street address of business …….....……

b. Business telephone No. …….....

4. No. of branches ☐ Locations? ……..…….

5. Are the client accounts of branches combined or separate? ……

6. No. of staff ☐

7. No. of Directors over the last 12 months ☐

Name	Date of Appointment	Resignation Date
1) ……	……..	…….
2) …….	……..	…….
3) …….	……..	…….
4) …….	……..	…….
5) …….	……..	…….
6) …….	……..	…….

8. No. of attorneys with the firm over the last 12 months? ☐

Name	Date of Employment	Termination Date
1) …….	……..	…….
2) …….	……..	…….
3) …….	……..	…….
4) …….	……..	…….
5) …….	……..	…….
6) …….	……..	…….

(N.B. please attach a list of other directors or attorneys if the space above is inadequate).

PART II: Customer Verification Procedures

Points Scored (for Commission use only)

9. Total no. of facilities on record ☐
   - established prior to 1st Jan. 2001 ☐
   - established on or after 1st Jan. 2001 ☐

10. Total no. of facilities examined ☐
    - established prior to 1st Jan. 2001 ☐
    - established on or after 1st Jan. 2001 ☐

11. Has each facility holder for the facility examined been properly verified in compliance with the Regulations 3, 4 & 5 or introduced by letter as required by Regulation 7 (2) of the FTRR? 11 _____

    yes ☐ *no* ☐

12. What percentage of files examined did not comply with no. 11? 12 _____
    - established prior to 1st Jan. 2001 # ☐ % ☐
    - established on or after 1st Jan. 2001 # ☐ % ☐

13. Please indicate how many cash transactions above $10,000 have been conducted by or for the benefit of a non-facility holder within the last 12 months. ☐

14. What percentage of transactions identified in no. 13 were verified in accordance with regulations 3, 4, and 5 of the FTRR? ☐ 14 _____

15. What percentage of transactions identified in no. 13 relied upon confirmation letters that verification had been carried out by another financial institution? ☐

PART III: Transaction Recordkeeping Procedures

16. What amount and percentage of facilities and transactions in 13 examined combined, did not have related records of all transactions as required by section 23 of the FTRA? 16 _____

    # ☐ % ☐

PART IV: SUSPICIOUS TRANSACTIONS REPORTING PROCEDURES

Points Scored

17. Name of Money Laundering Reporting Officer (MLRO) …….. 17 _____

18. Has he/she confirmed that he/she is aware of his/her responsibilities under the FI(TR)R 2001? 18 _____

yes ☐ *no* ☐

19. Is the MLRO registered with the FIU? *yes* ☐ *no* ☐ 19 _____

20. If different to no. 17 name of Compliance Officer …….

21. Has he/she confirmed that he/she is aware of his/her responsibilities under the FI(TR)R 2001? 21 _____

yes ☐ *no* ☐

22. How many suspicious transactions report been made to the FIU in the last 12 months? ☐

PART V: Training and Staff Awareness Procedures

23. Do the contents of the FIU guidelines form part of the staff anti-money laundering training and awareness procedures? 23 _____

yes ☐ *no* ☐

24. Do internal compliance reviews take place?

yes ☐ *no* ☐

25. What is the frequency of such reviews? …….. 25 _____

26. Is there a staff training programme in place? yes ☐ no ☐ 26 _____

27. Please attach a copy of any relevant materials or manuals used for anti-money laundering staff training/awareness. 27 _____

PART VI: General Comments

28. Please let us have any further comments …….

……

……

……

Examination Date .....

Name of Examiner .....

THE INSPECTOR, FINANCIAL AND CORPORATE SERVICE PROVIDERS
Ground Floor
50 Shirley Street
P.O. Box N-532
Nassau, Bahamas

THE COMPLIANCE COMMISSION
Third Floor
Cecil V. Wallace-Whitfield Centre
Cable Beach
P.O. Box N-3017
Nassau, Bahamas

PREFACE

The Financial and Corporate Services Providers Act, 2000 (FCSPA) and the Financial Transactions Reporting Act, 2000 (FTRA) call for mandatory annual inspections of the operations of Financial and Corporate Service Providers.

The inspections will be combined so as to minimize any inconvenience to the institutions involved. Therefore, the inspection form is in two parts- the first part relating to the FCSPA and the second encompassing all financial institutions described in Section 3 of the FTRA.

Also, the verification and record keeping requirements of this Act include all IBC's and Exempted Limited Partnerships. This is different from the examination called for under the FCSPA.

Part I : **FINANCIAL & CORPORATE SERVICE PROVIDERS ACT, 2000**

Particulars of the Licensee

1. Name of Licensee_____
2. Licensee's No. _____
3. Street Address of Licensee _____
4. Licensee's Telephone No. _____ Fax No. _____
5. Licensee's Postal Address _____
6. No. of Staff _____
7. No. of Directors and Management staff over the last 12 months _____

DIRECTORS

Name	Date of Appointment	Resignation Date
1)_____	_____	_____
2)_____	_____	_____
3)_____	_____	_____
4)_____	_____	_____
5)_____	_____	_____
6)_____	_____	_____

MANAGEMENT

Name	Date of Employment	Date of Termination
1)_____	_____	_____
2)_____	_____	_____
3)_____	_____	_____
4)_____	_____	_____

(N.B.- Please attach a list of additional names if the space provided is insufficient)

8. No. of IBC's on record _____

9. No. of Exempted Limited Partnerships on record _____

10. Percentage of records examined _____

If the client is a financial institution, a publicly traded company or a mutual fund regulated by the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Registrar of Insurance or the Gaming Board or an equivalent regulatory and supervisory body in countries outlined in the First Schedule to the Financial Transactions Reporting Act, 2000, the licensee is exempt from providing the information in 11.1 and 11.2 below.

The information in 11.1 relate to International Business Companies (IBC's)
Please confirm that the following documents are on file-

11.1	a) Instructing client's principal place of business	Yes/No
	b) Instructing client's business address	Yes/No
	c) Instructing client's telephone No.	Yes/No
	d) Instructing client's facsimile	Yes/No
	e) Instructing client's telex numbers	Yes/No
	f) Instructing client's electronic address	Yes/No
	g) Two references on the client's reputation or letter of introduction if not introduced by a designated Financial Institution	Yes/No
	h) Activity that IBC is engaged in	Yes/No

The information in 11.2 relate to Exempted Limited Partnerships.
Please confirm that the following documents are on file-

11.2 Names and addresses of Partners in the Exempted Limited Partnership Yes/ No

PART: Customer Verification Procedures

Points Scored for Commission use only)

9. Total no. of facilities on record

   - established prior to 1st Jan. 2001 ☐
   - established on or after 1st Jan. 2001 ☐

10. Total no. of facilities examined ☐

    - established prior to 1st Jan. 2001 ☐
    - established on or after 1st Jan. 2001 ☐

11. Has each facility holder for the facility examined been properly verified in compliance with the Regulations 3,4 & 5 or introduced by letter as required by Regulation 7 (2) of the FTRR? 11 _____

    yes ☐ *no* ☐

12. What percentage of files examined did not comply with no. 11? 12 _____

    - established prior to 1st Jan. 2001 # ☐ % ☐
    - established on or after 1st Jan. 2001 # ☐ % ☐

13. Please indicate how many cash transactions above $10,000 have been conducted by or for the benefit of a non-facility holder within the last 12 months. ☐

14. What percentage of transactions identified in no. 13 were verified in accordance with regulations 3, 4, and 5 of the FTRR? 14 _____ ☐

15. What percentage of transactions identified in no. 13 relied upon confirmation letters that verification had been carried out by another financial institution? ☐

PART III: Transaction Recordkeeping Procedures

16. What amount and percentage of facilities and transactions in 13 examined combined, did not have related records of all transactions as required by section 23 of the FTRA? 16 _____

    # ☐ % ☐

PART IV: SUSPICIOUS TRANSACTIONS REPORTING PROCEDURES

Points Scored

17. Name of Money Laundering Reporting Officer (MLRO) …… 17 _____

18. Has he/she confirmed that he/she is aware of his/her responsibilities under the FI(TR)R 2001? 18 _____

yes ☐ *no* ☐

19. Is the MLRO registered with the FIU? *yes* ☐ *no* ☐ 19 _____

20. If different to no. 17 name of Compliance Officer …….

21. Has he/she confirmed that he/she is aware of his/her responsibilities under the FI(TR)R 2001? 21 _____

yes ☐ *no* ☐

22. How many suspicious transactions report been made to the FIU in the last 12 months? ☐

PART V: Training and Staff Awareness Procedures

23. Do the contents of the FIU guidelines form part of the staff anti-money laundering training and awareness procedures? 23 _____

yes ☐ *no* ☐

24. Do internal compliance reviews take place?

yes ☐ *no* ☐

25. What is the frequency of such reviews? …….. 25 _____

26. Is there a staff training programme in place? yes ☐ *no* ☐ 26 _____

27. Please attach a copy of any relevant materials or manuals used for anti-money laundering staff training/awareness. 27 _____

PART VI: General Comments

28. Please let us have any further comments ……...

……

……

……

Examination Date .....

Name of Examiner .....

(1) MONEY LAUNDERING OFFENCES PENALTIES AND DEFENCES UNDER THE PROCEEDS OF CRIME ACT 2000

For the purposes of the POCA the term "criminal conduct" includes (1) drug trafficking, (2) bribery and corruption, (3) money-laundering, (4) any offence which may be tried in the Supreme Court of The Bahamas other than a drug trafficking offence and (5) an offence committed anywhere that, if committed in The Bahamas, would constitute an offence in The Bahamas as set out in the Schedule to the Proceeds of Crime Act, 2000.

The term "property" is defined under the POCA to mean, money and all other property, moveable or immoveable, including things in action and other intangible and incorporeal property.

Offences	***Penalties***	***Defences***
Concealing, Transferring Or Dealing With The Proceeds Of Criminal Conduct (Section 40) 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.	On summary conviction - 5 years imprisonment or a fine of $100,000, or both. On conviction on information - imprisonment for 20 years or to an unlimited fine or both.	
Assisting Another To Conceal The Proceeds Of Criminal Conduct (Section 41). It is an offence for any person to provide assistance to a criminal for the purpose of obtaining, concealing, retaining or investing funds, knowing or suspecting, or having reasonable grounds to suspect that those funds are the proceeds of serious criminal conduct and/ or a "relevant criminal offence".	On summary conviction - 5 years imprisonment or a fine of $100,000, or both. On conviction on information to imprisonment for 20 years or to an unlimited fine or both. *It is important to note that these are mandatory penalties.*	**It is a defence that the person concerned did not 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.**
Acquisition, Possession Or Use (Section 42) 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.	On summary conviction by 5 years imprisonment or a fine of $100,000, or both. On conviction on information to imprisonment for 20 years or to an unlimited fine or both. *(It is important to note that these are mandatory penalties).*	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.]**

Offences	*Penalties*	*Defences*
Failure To Disclose (Section 43) 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.	On summary conviction - 5 years imprisonment or a fine of $100,000, or both; On conviction on information - imprisonment for 20 years or to an unlimited fine or both.	It is a defence 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.
Tipping Off (Section 44) 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 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 unless the enquirer knows that an investigation is underway or the enquiries are likely to prejudice an investigation. Where it is known or suspected that a suspicious transaction report has already been disclosed to the Financial Intelligence Unit, the Police or other authorised 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.	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; 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 Proceeds of Crime Act, 2000).	It is a defence 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 made under a lawful authority or with reasonable excuse.

(2) MONEY LAUNDERING RELATED OFFENCES UNDER THE FTRA & FI(TR)R

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

Offence	*Penalties*	*Defences*
Failing or refusing to provide records, information or explanation when required to do so by the Commission **(FTRA)**	Maximum fine on summary conviction is $50,000 or 3 years imprisonment or both.	

Offence	*Penalties*	*Defences*
Verification Offences **(FTRA s. 12)** 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.	On summary conviction: Maximum fine of $20,000 for individuals and $100,000 for Corporations.	*Either* that all reasonable steps were taken to verify *or* under the circumstances could not reasonably be expected to ensure that verification has been satisfied. [11]
Recordkeeping Offences **(FTRA s. 30)** Failure to maintain records as required.	On summary conviction $20,000 maximum in the case of an individual and $100,000 maximum in the case of a corporation.	
Suspicious Transactions Reporting Offences **(FTRA s. 20)** (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 - (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 possible commission of a money laundering offence. (4) Disclosing information about the contemplation or existence of an STR.	On summary conviction a $20,000 max. fine for an individual and $100,000 for a corporation. On summary conviction a maximum fine of $10,000. Maximum penalty on summary conviction: 2 years imprisonment. 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.	Same as the defence for failing to verify.
Failure to comply with any regulation under the Financial Intelligence (Transactions Reporting) Regulations e.g. Maintain Internal Reporting Procedures, appoint an MLRO, provide staff education and training programmes in the detection and prevention of money laundering.	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.	

[11] Notice of Defence must be served on the prosecution within 21 days of the summons being served, with particulars of the defence. The court is empowered to grant an extension of time for the service of the notice.

To: From: (stamp of branch sending the letter)

Dear Sirs:

REQUEST FOR VERIFICATION OF CUSTOMER IDENTITY

In accordance with the Money Laundering Guidelines for licenced financial institutions we write to request your verification of the identity of our prospective customer detailed below.

Full name of customer .....

Title (MR/MRS/MISS/MS) SPECIFY .....

Address including postcode .....
(as given by customer) .....
.....

Date of birth ..... Account Number .....
(if known)

Example of customer's signature

Please respond positively and promptly by returning the tear-off portion below

To: The Manager (originating branch) From: (branch stamp)

Request for verification of the identity of (title and full name of customer)

With reference to your enquiry dated ..... we:

1) Confirm that the above customer *is/is not known to us.
2) *Confirm/cannot confirm the address shown in your enquiry.
3) *Confirm/cannot confirm that the signature reproduced in your enquiry appears to be that of the above customer.

The above information is given in strict confidence, for your private use only, and without any guarantee or responsibility on the part of this financial institution or its officials.

*Delete as applicable.

SUSPICIOUS TRANSACTION REPORT

Completed forms should be forwarded by fax or courier to the Financial Intelligence Unit, Norfolk House, Frederick Street, Nassau, Bahamas. P.O. Box SB-50086 Telephone: (242) 356-9808 or 356-6327, Facsimile: (242) 322-5551

For Official Use Only FIU Reference Number:.....

To: **Financial Intelligence Unit – Fax: (242) 322-5551**

Date: _____ **No. of Pages:** _____

NB: Persons who report suspicious transactions are required, pursuant to section 14(2)(b) and (c) of the Financial Transactions Reporting Act, 2000, and, pursuant to section 4(2)(d) of the Financial Intelligence Unit Act, 2000, to provide the Financial Intelligence Unit with the following information:

[A] Disclosing Institution

Disclosure Type: Proceeds of Crime ☐
Drug Trafficking ☐
Other ☐

Report No.:.....

Type of Transaction: .....

.....

Name of Disclosing Institution:.....

Full Address: .....

.....

Sort Code: .....

Name of Person Handling Transaction: .....

Name of Money Laundering Reporting Officer/Contact Person: .....

Direct Telephone No: ..... Fax: .....

E-mail Address:.....

[B] Subject(s) of Disclosure - Individual

Full Name (Individual): .....

Date and Place of Birth: .....

Nationality:..... Occupation:.....

Full Address: .....

.....

Telephone No. (Work):..... Telephone No. (Home): .....

Fax: ..... E-mail Address:.....

Identification Documents:.....

.....

[C] Subject(s) of Disclosure - Company

Company Name: .....

Type of Business:.....

Full Address: .....

.....

Telephone No.:..... Fax No.:.....

E-mail Address:.....

Identification Documents *(e.g., certificate of incorporation, memorandum and articles of association, etc.)*: .....

.....

[D] Beneficial Owner(s)

(of the assets being the subject(s) of disclosure – if different from the subject(s) of disclosure above)

Full Name:.....

Date and Place of Birth (Individual): .....

Nationality:.....

Type of Business/Occupation: .....

Full Address: .....

.....

Telephone No. (Work):..... Telephone No. (Home): .....

Fax: ..... E-mail Address:.....

Identification Documents (Individual):.....

.....

[E] Authorised Signatories

Information on authorised signatories and/or persons with power of attorney.
(List further persons in an annex in the same manner as required below)

Full Name (Individual): .....

Date and Place of Birth (Individual): .....

Nationality:..... Occupation:.....

Full Address: .....

.....

Telephone No. (Work):..... Telephone No. (Home): .....

Fax: ..... E-mail Address:.....

Identification Documents:.....

.....

[F] Intermediaries

Full Name (Individual): .....

Nationality:..... Occupation: .....

Full Address: .....

.....

Telephone No. (Work):..... Telephone No. (Home): .....

Fax: ..... E-mail Address:.....

[G] Account Information/Activity

Type of Account: (e.g., individual/joint, trust, loan, etc.): .....

Account number: .....

Date Opened: .....

Assets Held: .....

Other Accounts Held by any of the Parties Involved: .....

REASONS FOR SUSPICION

Details of Sums Arousing Suspicion Indicating Debit or Credit Source and Currency Used	Amount	Debit or Credit	Date	Source

Please describe the details of the transaction(s) and the activity that promoted the report, giving reason for your suspicion and any steps that have already been taken (e.g., own investigations). Include information on any third party(s) involved (e.g., payee, payer, deliverer of checks, stocks, guarantee beneficiary, guarantee surety, third party security creditors). Please add continuation sheets as necessary.

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When submitting this report, please append any additional material that may be of assistance to the FIU, i.e., bank statements, correspondence, vouchers, transfers, account opening and identification documents, etc.

You are asked to assist with completing the attached statistical analysis, which will help us to give you feedback – Thank you!

STATISTICAL INFORMATION

Nature of Institution	**Please tick**	**Grounds for Disclosure?** *Please tick all that apply*	**Please tick**
Bank		Media / Publicity	
Fund Managers		Internet Research	
Bureaux Des Changes		Group Information	
Stockbrokers		3rd Party Information	
Financial Advisors		Service of Production Order	
Insurance Companies		Service of Investigation of Fraud Order	
Trust Company		Police enquiry	
Company Service Provider		Account Activity Not in Keeping with KYC	
Lawyers		Evidence of Forged Documentation	
Accountants		Cash Transactions	
Local Regulator		Transitory Accounts – Immediate Layering	
Other Regulator		High Risk Jurisdictions	
Other (specify)		Unusual Forex Transactions	
		Purchase and Surrender of Insurance Policy	
Trends?		Repeat disclosures	
Involving at least one intermediary		Failure to comply with due diligence/checks	
Long Standing Customer (pre 01/07/99)		Other (specify)	
New Customer (since 01/07/99)			
Electronic Banking		**What currency was involved?**	
EURO Transaction		GBP	
		USD	
		EUR	
Criminality Suspected		ESP	
Drugs		GDM	
Terrorism		ITL	
Fraud		FRF	
Revenue Fraud		IEP	
Insider Dealing		SEK	
Corruption		CHF	
Unknown / undetermined		BSD	
Regulatory Matters		OTHER	
Other			

Completed forms should be forwarded to the Financial Intelligence Unit, Norfolk House, Frederick Street, P.O. Box SB-50086, Telephone No. (242) 356-9808 or (242) 356-6327, Fax: (242) 322-5551

APPENDIX H

Financial Intelligence Unit

Norfolk House, Frederick Street,
P.O. Box SB-50086
Nassau, Bahamas
Tel. Nos.: (242)356-9808 or (242)356-6327
Fax: (242) 322-5551

Your Ref:
Our Ref: Date:

The Manager
Anybank
Anystreet
Nassau, Bahamas

Dear Sir:

Re: Financial Investigation Feedback Report

Following the receipt of your recent disclosure and the subsequent enquiries made by this department, I enclose for your information a summary of the present position of the case (see overleaf).

The current status shown, whilst accurate at the time of making this report, should not be treated as a basis for subsequent decision, without reviewing the up-to-date position.

Please do not hesitate to contact the concerned Financial Intelligence Unit if you require any further information or assistance.

Yours faithfully,

Authorized Officer
Financial Intelligence Unit

Enclosure

RESULTS CATEGORY

☐ DRUG POSITIVE	Resulting in arrest/prosecution.
☐ DRUG SUSPECT	Related to drug trafficking without arrest/ prosecution AND/OR subject known in local indices.
☐ CRIME POSITIVE	Related to crime without arrest/prosecution AND/OR known in local indices.
☐ CRIME SUSPECT	Related to crime without arrest/prosecution AND/OR known in local indices.
☐ TERRORISM POSITIVE	Resulting in arrest/prosecution.
☐ TERRORISM SUSPECT	Resulting in arrest/prosecution.
☐ NOTED FOR INTELLIGENCE PURPOSES	Initial checks completed only, information noted for intelligence purposes.
☐ UNKNOWN	Source of funds unknown, suspicion remains unresolved.
☐ NEGATIVE	POSITIVELY established to be unconnected to crime, drug trafficking or terrorism.

APPENDIX I

The Global Fight Against Money Laundering

The Financial Action Task Force

The Financial Action Task Force (FATF) was founded by the Governments of the G7 leading industrialised nations in 1989. The FATF is the main international body for tackling money laundering. A list of its member countries can be found at the FATF website www.fatf-gafi.org. The FATF is an inter-governmental body which develops and promotes policies, both nationally and internationally, to combat money laundering. As a "policy making body" therefore, its primary goal is to generate the political will necessary for bringing about national legislative and regulatory reforms in this area.

The FATF have put together 40 Recommendations on tackling money laundering. The 40 Recommendations provide the scope for cooperation at the international level in the global fight against money laundering.

The Forty Recommendations set out the framework for anti-money laundering efforts and are designed for universal application. They provide a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation.

Some of the basic obligations contained in the Recommendations are:

- The criminalisation of the laundering of the proceeds of serious crimes (Recommendation 4) and the enactment of laws to seize and confiscate the proceeds of crime (Recommendation 7).

- Obligations for financial institutions to identify all clients, including any beneficial owners of property, and to keep appropriate records (Recommendations 10 to 12).

- A requirement for financial institutions to report suspicious transactions to the competent national authorities (Recommendation 15), and to implement a comprehensive range of internal control measures (Recommendation 19).

- Adequate systems for the control and supervision of financial institutions (Recommendations 26 to 29).

- The need to enter into international treaties or agreements and to pass national legislation which will allow countries to provide prompt and effective international co-operation at all levels (Recommendations 32 to 40).

- The criminalizing of terrorism financing and standards for detection and prevention of such and international cooperation as in the case of money laundering, for combating terrorist financing. (Special 8 Recommendations

The FATF has also promoted the concept of regional organisations along the lines of its own structure, whose goals would be to raise awareness of money laundering and introduce regional evaluation programmes to monitor implementation of the 40 Recommendations, amongst other things.

The Caribbean Financial Action Task Force (CFATF)

The Caribbean Financial Action Task Force was established as part of the efforts of the FATF to establish regional style bodies patterned after the FATF. The CFATF came into existence as a result of three regional meetings of Governments. The first occurred in June 1990 in Aruba at a conference attended by representatives of fifteen states, plus the five 'donor' countries of the FATF which have an affiliation with the region[12]. The Aruba meeting reviewed the 40 recommendations of the FATF and produced twenty-one recommendations, nineteen of which were later adopted as the CFATF recommendations. These complement the original FATF recommendations and have particular applicability within this region.

The second regional meeting took place in Kingston, Jamaica, in June 1992, and was attended by the representatives of the states and territories which had attended the Aruba meeting. This meeting addressed the main areas of focus: legal; financial; political; and technical assistance. Detailed recommendations were prepared, and later presented to a Ministerial Meeting which was convened in Kingston in November 1992. The Ministerial Meeting produced an accord embodied in the 'Kingston Declaration on Money Laundering'. This Declaration endorses the implementation of the 1988 UN 'Vienna' Convention, the OAS Model Regulations and the FATF and the CFATF recommendations. The Kingston Declaration also called for the establishment of a Regional Secretariat to co-ordinate the process of implementation within member states.

In November 1993 a Steering Group meeting was convened in Port of Spain which agreed on the arrangements for the creation of the Secretariat. The Secretariat was then established during early 1994, in Trinidad and Tobago, and funded by the FATF donor countries. The Chair of CFATF is rotated annually amongst its members.

Further information on the CFATF and its work can be viewed on its website at www.cfatf.org

[12] United States, Canada, France, U.K. and The Netherlands