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**CHAPTER 368****FINANCIAL TRANSACTIONS REPORTING**

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## CHAPTER 368

### FINANCIAL TRANSACTIONS REPORTING

**An Act to impose certain obligations on financial institutions in relation to the conduct of financial transactions; and for connected purposes.**

*[Commencement 29th December, 2000  
(except sections 12, 20 and 30: 29th June, 2001)]*

*40 of 2000  
17 of 2001  
31 of 2002  
1 of 2003  
23 of 2003  
S.I. 39/2004  
20 of 2007  
36 of 2008*

### PART I PRELIMINARY PROVISIONS

1. This Act may be cited as the Financial Transactions Reporting Act. Short title.
2. (1) In this Act — Interpretation.
- “accountant” means a person registered and licensed under the Public Accountants Act; Ch. 364.
- “cash” means any coin or paper money that is designated as legal tender in the country of issue and includes bearer bonds, travellers cheques, postal orders and money orders; *17 of 2001, s. 2.*
- “Commission” means the Compliance Commission established under section 39;
- “Comptroller” has the same meaning as in section 2 of the Customs Management Act; Ch. 293.
- “counsel and attorney” means a counsel and attorney admitted to practice under the Legal Profession Act; Ch. 64.
- “document” has the same meaning as in section 2 of the Evidence Act; Ch. 65.
- “facility” subject to any regulations made under this Act —
- (a) means any account or arrangement —
- (i) that is provided by a financial institution to a facility holder; and *17 of 2001, s. 2.*
- (ii) by, through or with which a facility holder may conduct two or more transactions whether or not they are so used; and

- (b) without limiting the generality of the foregoing, includes —
  - (i) a life assurance policy;
  - (ii) membership of a superannuation scheme;
  - (iii) the provision, by a financial institution, of facilities for safe custody, including (without limitation) a safety deposit box;

“facility holder”, in relation to a facility —

- (a) means the person in whose name the facility is established;
- (b) without limiting the generality of the foregoing, includes —
  - (i) any person to whom the facility is assigned; and
  - (ii) any person who is authorised to conduct transactions through the facility;
- (c) in relation to a facility that is a life assurance policy, means any person who for the time being is the legal holder of that policy;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act;

“financial institution” has the meaning given to it by section 3;

“foreign financial institution” means a financial institution which, in a country specified in the First Schedule, exercises functions equivalent to the corresponding financial institution in The Bahamas in accordance with section 3 and that is subject to equivalent or higher anti-money laundering and anti-terrorism financing standards of regulation as provided for by Bahamian law;

“funds” means cash, securities, cheques, drafts, bank deposits, payment orders and other negotiable instruments which are readily convertible into cash;

“industry organisation” means any organisation the purpose of which, or one of the purposes of

Ch. 367.

*17 of 2001, s. 2.*  
*36 of 2008, s. 2.*

First Schedule.

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- which, is to represent the interests of any class or classes of financial institution;
- “Inspector” means the Inspector of Banks and Trust Companies established under section 9 of the Banks and Trust Companies Regulation Act; Ch. 316.
- “life assurance policy” means a policy within the meaning of section 2 of the Insurance Act; Ch. 347.
- “Minister” means the Minister responsible for the administration of this Act;
- “money laundering offence” has the same meaning as in the Proceeds of Crime Act; Ch. 93.
- “occasional transaction” means any one-off transaction, including but not limited to cash, that is carried out by a person otherwise than through a facility in respect of which that person is a facility holder; *36 of 2008, s. 2.*
- “prescribed amount” in relation to Part II, means such amount as is for the time being prescribed for the purposes of that Part by regulations made under section 51; *S.I. 128/2001.*
- “principal facility holder” in relation to a facility provided by a financial institution, means the facility holder or facility holders whom that financial institution reasonably regards, for the time being, as principally responsible for the operation, use or administration of that facility;
- “real estate broker” has the same meaning as in section 2 of the Real Estate (Brokers and Salesmen) Act; Ch. 171.
- “real estate transaction” means any matter that involves any work that may be done only —
- (a) by or under the supervision of a counsel and attorney by virtue of section 22 of the Legal Profession Act; or Ch. 64.
  - (b) by a real estate broker who holds a licence in force under the Real Estate (Brokers and Salesmen) Act; Ch. 171.
- “superannuation scheme” means a superannuation scheme within the meaning of the Superannuation and other Trust Funds (Validation) Act; but does not include — Ch. 178.

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- (a) any superannuation scheme established principally for the purpose of providing retirement benefits to employees where —
    - (i) contributions to the scheme by employees are made only by way of deduction from the salary or wages of those employees; and
    - (ii) the trust deed governing the scheme (or, as the case requires, the statute under which the scheme is constituted) does not permit a member to assign his or her interest in the scheme to any other person; or
  - (b) any superannuation scheme in respect of which no advertisement has been published inviting the public or any section of the public to become contributors to the scheme;

*36 of 2008, s. 2.*

“Supervisory Authority” means, in relation to a financial institution under section 3, the agency designated by law for ensuring compliance with the requirements of this Act and any other anti-money laundering laws of The Bahamas, and includes the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Registrar of Insurance Companies, the Inspector of Financial and Corporate Services, the Gaming Board and the Compliance Commission;

“suspicious transaction guidelines” means any guidelines for the time being in force;

“suspicious transaction report” means a report made pursuant to section 14(1);

“transaction” —

- (a) means any deposit, withdrawal, exchange or transfer of funds (in whatever currency denominated), whether —
  - (i) in cash;
  - (ii) by cheque, payment order or other instrument; or
  - (iii) by electronic or other non-physical means; and

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- (b) without limiting the generality of the foregoing, includes any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation, but does not include any of the following —
- (c) the placing of any bet;
- (d) participation in any game of chance defined in the Lotteries and Gaming Act; Ch. 387.
- (e) any transaction that is exempted from the provisions of this Act by or under regulations made under section 51. S.I. 128/2001.
- (2) For the purposes of this Act, a person becomes a facility holder in relation to a facility when that person is first able to use the facility to conduct transactions.
- (3) *Repealed.* 36 of 2008, s. 2.
- 3.** (1) Subject to any regulations made under this Act, the term “financial institution” means any of the following —
- (a) a bank or trust company, being a bank or trust company licensed under the Banks and Trust Companies Regulation Act; Ch. 316.
- (b) a company carrying on life assurance business as defined in section 2 of the Insurance Act or insurance business as defined in section 2 of the External Insurance Act; 1 of 2003. Ch. 347. Ch. 348.
- (c) a co-operative society registered under the Co-operative Societies Act; Ch. 314.
- (d) a friendly society enrolled under the Friendly Societies Act; Ch. 313.
- (e) a licensed casino operator within the meaning of the Lotteries and Gaming Act; Ch. 387.
- (f) a broker-dealer within the meaning of section 2 of the Securities Industry Act; Ch. 363.
- (g) a real estate broker, but only to the extent that the real estate broker receives funds in the course of the person’s business for the purpose of settling real estate transactions;
- (h) a trustee or administration manager or investment manager of a superannuation scheme;

23 of 2003  
36 of 2008, s. 3.  
Ch. 369A.

- (i) an investment fund administrator of an investment fund within the meaning of the Investment Funds Act;
- (j) any person whose business or a principal part of whose business consists of any of the following —
  - (i) borrowing or lending or investing money;
  - (ii) administering or managing funds on behalf of other persons;
  - (iii) acting as trustee in respect of funds of other persons;
  - (iv) dealing in life assurance policies;
  - (v) providing financial services that involve the transfer or exchange of funds, including (without limitation) services relating to financial leasing, money transmissions, credit cards, debit cards, treasury certificates, bankers draft and other means of payment, financial guarantees, trading for account of others (in money market instruments, foreign exchange, interest and index instruments, transferable securities and futures), participation in securities issues, portfolio management, safekeeping of cash and liquid securities, investment related insurance and money changing; but not including the provision of financial services that consist solely of the provision of financial advice;

36 of 2008, s. 3.

- (k) a counsel and attorney, but only to the extent that the counsel and attorney receives funds in the course of that person's business otherwise than as part of services rendered pursuant to a financial and corporate service provider's licence —
  - (i) for the purposes of deposit or investment;
  - (ii) for the purpose of settling real estate transactions; or
  - (iii) to be held in a client account;

17 of 2001, s. 3.  
36 of 2008, s. 3.

- (l) an accountant, but only to the extent that the accountant receives funds in the course of that person's business for the purposes of deposit or investment otherwise than as part of services

rendered pursuant to a financial and corporate service provider's licence;

- (m) a financial and corporate service provider licensed under the Financial and Corporate Service Providers Act. *36 of 2008, s. 3.*  
Ch. 369.

(2) A person shall not be regarded as a financial institution for the purposes of this Act merely because that person carries on business as a security guard within the meaning of section 2 of the Inquiry Agents and Security Guards Act. Ch. 210.

4. (1) Where, for the purposes of any provision of this Act, it is necessary to determine whether or not the amount of any cash (whether alone or together with any other amount of cash) exceeds the prescribed amount, and the cash is denominated in a currency other than Bahamian currency, the amount of the cash shall be taken to be the equivalent in Bahamian currency, calculated at the rate of exchange on the date of the determination, or, if there is more than one rate of exchange on that date, at the average of those rates. Amounts not in Bahamian currency.

(2) For the purposes of subsection (1), a written certificate purporting to be signed by an officer of any bank in The Bahamas that a specified rate of exchange prevailed between currencies on a specified day and that at such rate a specified sum in one currency is equivalent to a specified sum in terms of the currency of The Bahamas shall be sufficient evidence of the rate of exchange so prevailing and of the equivalent sums in terms of the respective currencies.

5. This Act binds the Crown. Act to bind the Crown.

## PART II OBLIGATIONS ON FINANCIAL INSTITUTIONS TO VERIFY IDENTITY

6. (1) Subject to subsection (5), where any request is made to a financial institution for a person to become a facility holder (whether in relation to an existing facility provided by that financial institution or by means of the establishment, by that financial institution, of a new facility), that financial institution shall verify the identity of that person. Financial institutions to verify identity of facility holders.

(2) Where subsection (1) applies in respect of any request for a person to become a facility holder in relation to a facility (whether existing or new), the financial

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institution shall verify the identity of that person before that person becomes a facility holder in relation to that facility.

(3) Notwithstanding anything in subsection (1) where in relation to a facility provided by a financial institution there are two or more facility holders, it shall be necessary for that financial institution to have verified the identity of every such facility holder.

(4) Where, during the course of a business relationship, a financial institution has reason to doubt the identity of an existing facility holder, the financial institution shall seek to verify the identity of such facility holder.

(5) Notwithstanding anything in subsection (1), nothing in that subsection requires a trustee or administration manager or investment manager of a superannuation scheme to verify the identity of any person —

- (a) who becomes a member of that superannuation scheme by virtue of the transfer, to that scheme, of all the members of another superannuation scheme; or
- (b) who becomes a member of a section of that superannuation scheme by virtue of the transfer, to one section of that scheme, of all the members of another section of the same scheme.

*23 of 2003.*

(6) A financial institution shall verify the identity of any facility holder of any facility in existence prior to the 29th December, 2000 (hereinafter referred to as “an existing facility”):

Provided that where an existing facility has not been verified under this section as of the 1st day of April, 2004, the financial institution shall notify its Supervisory Authority who shall issue directions in writing to the financial institution in relation to that facility and such directions shall include the power to suspend or discontinue any further activity with the facility until such time as the verification has been made.

*23 of 2003, s. 4.  
36 of 2008, s. 3.*

(7) Any action taken by a Supervisory Authority under subsection (6) shall not be treated as a breach of any law and shall not give rise to any civil liability.

7. (1) Subject to subsection (2), where any person conducts an occasional transaction by, through or with a financial institution, that financial institution shall verify the identity of that person in any case where —

- (a) the amount of cash involved in the transaction exceeds the prescribed amount; or
- (b) the following conditions apply, namely —
  - (i) that person, or any other person, has also conducted or is conducting one or more other occasional transactions through that financial institution;
  - (ii) the circumstances in which those transactions have been or are being, conducted provide reasonable grounds to believe that the transactions have been, or are being, structured to avoid the application of paragraph (a); and
  - (iii) the total amount of cash involved in those transactions exceeds the prescribed amount.

Financial institutions to verify identity of persons conducting certain occasional transactions.

*17 of 2001, s. 5.*

*17 of 2001, s. 5.*

(2) Notwithstanding anything in subsection (1) but subject to the directions and guidance issued by its Supervisory Authority, nothing in subsection (1) requires a financial institution to verify the identity of a person who conducts an occasional transaction (in this subsection referred to as “the transactor”) through that financial institution in any case where —

*36 of 2008, s. 5.*

- (a) that financial institution is unable to readily determine whether or not the transaction involves cash because the funds involved in the transaction are deposited by the transactor into a facility (being a facility in relation to which that financial institution is a facility holder) provided by another financial institution;
- (b) the financial institution has obtained in writing confirmation that the other financial institution has verified the identity of the person:

*17 of 2001, s. 5.*

*17 of 2001, s. 5.*

Provided that such confirmation may be accepted from a foreign financial institution.

(3) Without limiting any other factors that a financial institution may consider for the purpose of determining whether or not any transactions are or have been structured to avoid the application of subsection

(1)(a), a financial institution shall consider, for that purpose, the following factors —

- (a) the time frame within which the transactions are conducted;
- (b) whether or not the parties to the transactions are the same person, or are associated in any way.

(4) Where subsection (1) applies in respect of any transaction, the financial institution shall verify the identity of the person conducting the transaction —

- (a) where paragraph (a) of subsection (1) applies, before the transaction is conducted;
- (b) where paragraph (b) of subsection (1) applies, as soon as practicable after the conditions specified in the paragraph are satisfied in respect of that transaction.

(5) Where subsection (1) applies in respect of any transaction, the financial institution shall also ask the person who is conducting or, as the case may be, conducted the transaction whether or not the transaction is being conducted or was conducted on behalf of any other person.

(6) Nothing in subsection (5) limits section 8.

**8.** (1) Subject to subsection (6) and without limiting section 7, where —

- (a) a person conducts an occasional transaction by, through or with a financial institution;
- (b) the amount of cash involved in the transaction exceeds the prescribed amount; and
- (c) the financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,

then in addition to complying with the requirements of section 7, the financial institution shall verify the identity of the other person or persons:

Provided that where a financial institution has reasonable grounds to believe, after an occasional transaction has been conducted, that the person who conducted the transaction was acting on behalf of another person or persons, the financial institution shall verify the identity of the other person or persons.

Verification  
where persons  
acting on behalf  
of others in  
respect of  
occasional  
transactions.  
*17 of 2001,  
s. 6(a).*

*S.I. 128/2001*

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(2) Without limiting section 7, where a person conducts an occasional transaction through a financial institution and the following conditions apply, namely —

- (a) that person, or any other person, has also conducted or is conducting one or more other occasional transactions through that financial institution; and
- (b) the circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe —
  - (i) that the person is conducting the transactions on behalf of any other person or persons; and
  - (ii) that the transactions have been, or are being, structured to avoid the application of subsection (1); and
- (c) the total amount of cash involved in those transactions exceeds the prescribed amount, *17 of 2001, s. 6.*

then in addition to complying with the requirements of section 7, the financial institution shall verify the identity of the person or persons on whose behalf it is believed the transactions are being conducted.

(3) Without limiting any other factors that a financial institution may consider for the purpose of determining whether or not any transactions have been structured to avoid the application of subsection (1), a financial institution shall consider, for that purpose, the following factors —

- (a) the time frame within which the transactions are conducted;
- (b) whether or not the parties to the transactions are the same persons, or are associated in any way.

(4) Where subsection (1) applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons before the transaction is conducted.

(5) Where subsection (2) applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons as soon as practicable after the conditions specified in that subsection are satisfied.

(6) Subject to the directions and guidance issued by its Supervisory Authority, nothing in subsection (1) *36 of 2008, s. 6.*

requires a financial institution to verify the identity of any person in any case where —

- (a) the person who is conducting the transaction is a financial institution;
- (b) the identity of the other person is required, by any provision of this Part, to be verified by that other financial institution; and
- (c) the financial institution has obtained in writing confirmation that the other financial institution has verified the identity of the person:

*1 of 2003.*

Provided that such confirmation may be accepted from a foreign financial institution.

Verification where facility holders acting on behalf of others.

- 9.** (1) Subject to subsections (6) and (7), where —
- (a) a person who is a facility holder in relation to a facility provided by a financial institution conducts a transaction through that facility;
  - (b) the amount of cash involved in the transaction exceeds the prescribed amount; and
  - (c) the financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,

*17 of 2001, s. 7.*

the financial institution shall verify the identity of the other person or persons.

(2) Where a person who is a facility holder in relation to a facility provided by a financial institution conducts a transaction through that facility, and the following conditions apply, namely —

- (a) that person, or any other person, has also conducted or is conducting one or more other transactions through that facility;
- (b) the circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe —
  - (i) that the person is conducting the transaction on behalf of any other person or persons;
  - (ii) that the transactions have been, or are being, structured to avoid the application of subsection (1); and

*17 of 2001, s. 7.*

- (c) the total amount of cash involved in those transactions exceeds the prescribed amount,

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the financial institution shall verify the identity of the other person or persons.

(3) Without limiting any other factors that a financial institution may consider for the purpose of determining whether or not any transactions are or have been structured to avoid the application of subsection (1), a financial institution shall consider, for that purpose, the following factors —

- (a) the time frame within which the transactions are conducted;
- (b) whether or not the parties to the transactions are the same persons, or are associated in any way.

(4) Where subsection (1) applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons before the transaction is conducted.

(5) Where subsection (2) applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons as soon as practicable after the conditions specified in that subsection are satisfied.

(6) Subject to the directions and guidance issued by its Supervisory Authority, nothing in subsection (1) requires a financial institution to verify the identity of any person in any case where — *36 of 2008, s. 7.*

- (a) the person who is conducting the transaction is a financial institution;
- (b) the identity of the other person is required, by any provision of this Part, to be verified by that other financial institution; and
- (c) the financial institution has obtained in writing confirmation that the other financial institution has verified the identity of the person:

Provided that such confirmation may be accepted from a foreign financial institution. *1 of 2003, Sch.*

(7) Nothing in subsection (1) requires a financial institution to verify the identity of any person (in this subsection referred to as the “other person”) where —

- (a) the transaction is conducted by any person in his or her capacity as an employee of the other person, or as a director or principal or partner of the other person; and

- (b) the financial institution has already verified the identity of the other person pursuant to this Part.

Application of sections 8 and 9 in relation to beneficiaries under a trust.

**10.** Nothing in sections 8 and 9 requires the verification of the identity of any person, in any case where on reasonable grounds it is believed —

- (a) that a transaction is being, or has been, conducted on that person's behalf in his or her capacity as the beneficiary under a trust; and
- (b) that the person does not have a vested interest under the trust.

Verification where offence under Proceeds of Crime Act suspected.

*23 of 2003, s. 4.*

Ch. 93.

Ch. 93.

**10A.(1)** Notwithstanding section 14, a financial institution shall verify the identity of any person that conducts any transaction (whether as a facility holder or not) through a financial institution where the financial institution knows, suspects or has reasonable grounds to suspect that the transaction or proposed transaction involves proceeds of criminal conduct as defined in the Proceeds of Crime Act or any offence under the Proceeds of Crime Act or an attempt to avoid the enforcement of any provisions of the Proceeds of Crime Act.

(2) Where subsection (1) of this section applies, the financial institution shall verify the identity of the person as soon as practicable after the financial institution has reasonable grounds to suspect that a transaction is of the kind referred to under subsection (1).

Procedures for verifying identity.

**11.** (1) Subject to subsections (3) to (5), where, by virtue of any provision of this Part, a financial institution is required to verify the identity of any person, that verification shall be done by means of such documentary or other evidence as is reasonably capable of establishing the identity of that person, including official documents and structural information in the case of corporate entities.

(2) Without limiting the generality of subsection (1), in verifying the identity of any person, a financial institution may rely (in whole or in part) on evidence used by that financial institution on an earlier occasion to verify that person's identity, if the financial institution has reasonable grounds to believe that the evidence is still reasonably capable of establishing the identity of that person:

*1 of 2003, Sch..*

Provided that such verification may be accepted from a foreign financial institution.

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(3) Subject to the directions and guidance issued by its Supervisory Authority, where — *36 of 2008, s. 8.*

(a) by virtue of any provision of this Part, a financial institution is required to verify the identity of any person in relation to any facility; and

(b) transactions may be conducted through that facility by means of an existing facility —

- (i) that is provided by another financial institution;
- (ii) in relation to which that person is a facility holder; and
- (iii) the financial institution has obtained in writing confirmation that the other financial institution has verified the identity of the person:

Provided that such confirmation may be accepted from a foreign financial institution, *1 of 2003, Sch.*

the first-mentioned financial institution may be deemed to have complied with the requirement to verify the identity of that person if that financial institution takes all such steps as are reasonably necessary to confirm the existence of the other facility. *36 of 2008, s. 8.*

(4) Subject to the directions and guidance issued by its Supervisory Authority, where — *36 of 2008, s. 8.*

(a) by virtue of any provision of this Part, a financial institution is required to verify the identity of any person in relation to an occasional transaction; and

(b) that occasional transaction is conducted by means of an existing facility —

- (i) that is provided by another financial institution;
- (ii) in relation to which that person is a facility holder; and
- (iii) the financial institution has obtained in writing confirmation that the other financial institution has verified the identity of the person: *1 of 2003.*

Provided that such confirmation may be accepted from a foreign financial institution,

36 of 2008, s. 8.

the first-mentioned financial institution may be deemed to have complied with the requirement to verify the identity of that person if the financial institution takes all such steps as are reasonably necessary to confirm the existence of the facility.

- (5) Where —
  - (a) by virtue of any provision of this Part, a trustee or administration manager or investment manager of a superannuation scheme is required to verify the identity of any person by reason that the person has become, or is seeking to become, a member of that scheme; and
  - (b) the superannuation scheme is established principally for the purpose of providing retirement benefits to employees,

that trustee or manager shall be deemed to have complied with the requirement to verify the identity of that person if that person's identity has been verified by his or her employer.

Offences.

**12.** (1) Every financial institution commits an offence against this section which —

- (a) in contravention of section 6(2), permits a person to become a facility holder in relation to any facility (being a facility provided by that institution) without first having verified the identity of that person;
- (b) in contravention of section 7(4)(a), permits any person to conduct an occasional transaction through that financial institution, without first having verified the identity of that person, in any case where the amount of funds involved in the transaction exceeds the prescribed amount;
- (c) where an occasional transaction is conducted by any person through that financial institution, fails, in contravention of section 7(4)(b), to verify the identity of that person as soon as practicable after the conditions specified in section 7(1)(b) are satisfied in respect of that transaction;
- (d) where —
  - (i) an occasional transaction is conducted by any person through that financial institution;

- (ii) the amount of funds involved in the transaction exceeds the prescribed amount; and
- (iii) the financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,

fails, in contravention of section 8(4), to verify the identity of that other person or, as the case requires, those other persons before the transaction is conducted, or as soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, so conducted;

(e) where —

- (i) an occasional transaction is conducted by any person through that financial institution; and
- (ii) the conditions specified in paragraphs (a) to (c) of section 8(2) apply in respect of that transaction,

fails, in contravention of section 8(5), to undertake the verification required by section 8(2) as soon as practicable after the conditions specified in section 8(2) are satisfied in respect of that transaction;

(f) where —

- (i) a person who is a facility holder in relation to a facility provided by that financial institution conducts a transaction through that facility;
- (ii) the amount of funds involved in the transaction exceeds the prescribed amount;
- (iii) the financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,

fails, in contravention of section 9(4), to verify the identity of that other person or, as the case requires, those other persons before the transaction is conducted; or as soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, so conducted; or

- (g) where —
- (i) a person who is a facility holder in relation to a facility provided by that financial institution conducts a transaction through that facility; and
  - (ii) the conditions specified in paragraphs (a) to (c) of section 9(2) apply in respect of that transaction,
- fails, in contravention of section 9(5), to undertake the verification required by section 9(2) as soon as practicable after the conditions specified in section 9(2) are satisfied in respect of that transaction.

(2) Every financial institution which commits an offence against this section is liable on summary conviction to a fine not exceeding —

- (a) in the case of an individual, twenty thousand dollars;
- (b) in the case of a body corporate, one hundred thousand dollars.

Defence.

**13.** (1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, any provision of this Part if the defendant proves —

- (a) that he took all reasonable steps to ensure that he complied with that provision; or
- (b) that, in the circumstances of the particular case, he could not reasonably have been expected to ensure that he complied with the provision.

(2) In determining, for the purposes of subsection (1)(a), whether or not a financial institution took all reasonable steps to comply with a provision of this Part, the court shall have regard to —

- (a) the nature of the financial institution and the activities in which it engages;
- (b) the existence and adequacy of any procedures established by the financial institution to ensure compliance with the provision, including (without limitation) —
  - (i) staff training; and
  - (ii) audits to test the effectiveness of any such procedures; and
- (c) any relevant guidelines issued by the Financial Intelligence Unit.

(3) Except as provided in subsection (4), subsection (1) shall not apply unless, within twenty-one days after the service of the summons, or within such further time as the court may allow, the defendant has delivered to the prosecutor a written notice —

- (a) stating that the defendant intends to rely on subsection (1); and
- (b) specifying the reasonable steps that the defendant will claim to have taken.

(4) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (3) shall not, except with the leave of the court, be admissible for the purpose of supporting a defence under subsection (1).

### PART III OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

**14.** (1) Notwithstanding any other written law or any rule of law, but subject to section 17, where —

- (a) any person conducts or seeks to conduct any transaction by, through or with a financial institution (whether or not the transaction or proposed transaction involves funds); and
- (b) the financial institution knows, suspects or has reasonable grounds to suspect that the transaction or proposed transaction involves proceeds of criminal conduct as defined in the Proceeds of Crime Act, or any offence under the Proceeds of Crime Act or an attempt to avoid the enforcement of any provision of the Proceeds of Crime Act,

Financial institutions to report suspicious transactions.

Ch. 93.

the financial institution shall, as soon as practicable after forming that suspicion, report that transaction or proposed transaction to the Financial Intelligence Unit.

(2) Subject to subsection (3), every suspicious transaction report shall —

- (a) be in the prescribed form (if any);
- (b) contain the details specified in the Second Schedule;
- (c) contain a statement of the grounds on which the financial institution holds the suspicion referred to in subsection (1)(b); and

Second Schedule.

- (d) be forwarded, in writing, to the Financial Intelligence Unit —
- (i) by way of facsimile transaction; or
  - (ii) by such other means (including, without limitation, electronic mail or other similar means of communication) as may be agreed from time to time between the Financial Intelligence Unit and the financial institution concerned.

(3) Notwithstanding paragraph (a) or paragraph (d) of subsection (2), where the urgency of the situation requires, a suspicious transaction report may be made orally to the Financial Intelligence Unit, but in any such case the financial institution shall, as soon as practicable, forward to the Financial Intelligence Unit a suspicious transaction report that complies with the requirements of subsection (2).

Auditors to  
report suspicious  
transactions.

Ch. 93.

36 of 2008, s. 9.

Protection of  
persons reporting  
suspicious  
transactions.

**15.** Notwithstanding any other written law or any rule of law, any person who, in the course of carrying out the duties of that person's occupation as an auditor, has reasonable grounds to suspect, in relation to any transaction that the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act, shall report that transaction to any member of the Financial Intelligence Unit.

**16.** (1) Where any information is disclosed or supplied in any suspicious transaction report made, pursuant to section 14, by any person, no civil, criminal or disciplinary proceedings shall lie against that person —

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

(2) Where any information is disclosed or supplied, pursuant to section 15, to any member of the Police by any person, no civil, criminal or disciplinary proceedings shall lie against that person —

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

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unless the information was disclosed or supplied in bad faith.

(3) Nothing in subsection (1) or subsection (2) applies in respect of proceedings for an offence against section 20.

**17.** (1) Nothing in section 14 requires any counsel and attorney to disclose any privileged communication.

Legal  
professional  
privilege.

(2) For the purposes of this section, a communication is a privileged communication only if —

(a) it is a confidential communication, whether oral or written, passing between —

(i) a counsel and attorney in his or her professional capacity and another counsel and attorney in such capacity; or

(ii) a counsel and attorney in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either;

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

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

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

(3) Where the information 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), it shall not be a privileged communication 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.

(4) For the purposes of this section, references to a counsel and attorney include a firm in which he or she is a partner or an associate or is held out to be a partner or an associate.

Suspicious transaction reports not to be disclosed.

**18.** (1) A financial institution that has made, or is contemplating making, a suspicious transaction report shall not disclose the existence of that report or, as the case requires, that the making of such a report is contemplated to any person except —

- (a) the financial institution’s Supervisory Authority;
- (b) the Financial Intelligence Unit;
- (c) the Commissioner of Police or a member of the Police who is authorised by the Commissioner to receive the information;
- (d) an officer or employee or agent of the financial institution, for any purpose connected with the performance of that person’s duties;
- (e) a counsel and attorney, for the purpose of obtaining legal advice or representation in relation to the matter;
- (f) the Central Bank of The Bahamas, for the purpose of assisting the Central Bank to carry out its functions under the Central Bank of The Bahamas Act.

Ch. 351.

(2) No person referred to in paragraph (b) of subsection (1) to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to another person of the kind referred to in that subsection, for the purpose of —

- (a) the performance of the first-mentioned person’s duties; or
- (b) obtaining legal advice or representation in relation to the matter.

S.I. 128/2001.

(3) No person referred to in paragraph (e) of subsection (1) to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to a person of the kind referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

(4) Subject to section 19, nothing in subsections (1) to (3) shall prevent the disclosure of any information in connection with, or in the course of, proceedings before a court.

Protection of identity of persons making suspicious transaction reports.

**19.** (1) This section applies in respect of the following information —

- (a) any suspicious transaction report;

- (b) any information the disclosure of which will identify, or is reasonably likely to identify, any person —
- (i) as a person who, in his or her capacity as an officer, employee or agent of a financial institution, has handled a transaction in respect of which a suspicious transaction report was made;
  - (ii) as a person who has prepared a suspicious transaction report; or
  - (iii) as a person who has made a suspicious transaction report.

(2) No member of the Police shall disclose any information to which this section applies except for one or more of the following purposes —

- (a) the enforcement of the Proceeds of Crime Act; Ch. 93.
- (b) the detection, investigation and prosecution of any relevant offence (within the meaning of the Proceeds of Crime Act), in any case where that offence may reasonably give rise to, or form the basis of, any proceedings under that Act; Ch. 93.
- (c) the administration of the Mutual Legal Assistance (Criminal Matters) Act; Ch. 98.
- (d) to assist the Financial Intelligence Unit and Foreign Intelligence Units to carry out their functions.

(3) No person shall be required to disclose, in any judicial proceeding any information to which this section applies, unless the Judge or, as the case requires, the person presiding at the proceeding is satisfied that the disclosure of the information is necessary in the interest of justice.

(4) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of subsections (3) to (5) of section 20.

**20.** (1) Every financial institution commits an offence against this section which, in any case where — Offences.

- (a) a transaction is conducted or is sought to be conducted through that financial institution; and
- (b) that financial institution has reasonable grounds to suspect that the transaction or, as the case requires, the proposed transaction is or may be relevant to the enforcement of the Proceeds of Crime Act; Ch. 93.

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fails, in contravention of section 14(1), to report that transaction or, as the case requires, that proposed transaction to the Financial Intelligence Unit as soon as practicable after forming that suspicion.

(2) Every financial institution which commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding —

- (a) in the case of an individual, twenty thousand dollars;
- (b) in the case of a body corporate, one hundred thousand dollars.

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars who, in making a suspicious transaction report —

- (a) makes any statement that the person knows is false or misleading in a material particular;
- (b) omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular.

(4) Every person commits an offence who —

- (a) for the purpose of obtaining, directly or indirectly, an advantage or a pecuniary gain for that person or any other person; or
- (b) with intent to prejudice any investigation into the commission or possible commission of a money laundering offence,

contravenes any of subsections (1) to (3) of section 18.

(5) Every person commits an offence who —

- (a) being an officer or employee or agent of a financial institution;
- (b) having become aware, in the course of that person's duties as such an officer or employee or agent, that any investigation into any transaction or proposed transaction that is the subject of a suspicious transaction report is being, or may be, conducted by the Police;
- (c) knowing that he or she is not legally authorised to disclose the information; and
- (d) either —

- (i) for the purpose of obtaining, directly or indirectly, an advantage or a pecuniary gain for that person or any other person; or
- (ii) with intent to prejudice any investigation into the commission or possible commission of a money laundering offence,

discloses that information to any other person.

(6) Every person who commits an offence against subsection (4) or (5) is liable on summary conviction to imprisonment for a term not exceeding two years.

(7) Every person who knowingly contravenes any of subsections (1) to (3) of section 18 commits an offence and is liable on summary conviction —

- (a) in the case of an individual, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months;
- (b) in the case of body corporate, to fine not exceeding twenty thousand dollars.

**21.** (1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, section 14(1) if the defendant proves — Defence.

- (a) that he took all reasonable steps to ensure that he complied with that provision; or
- (b) that, in the circumstances of the particular case, he could not reasonably have been expected to ensure that he complied with the provision.

(2) In determining, for the purposes of subsection (1)(a), whether or not a defendant took all reasonable steps to comply with section 14(1), the court shall have regard to —

- (a) the nature of the financial institution and the activities in which it engages;
- (b) the existence and adequacy of any procedures established by the financial institution to ensure compliance with that provision, including (without limitation) —
  - (i) staff training; and
  - (ii) audits to test the effectiveness of any such procedures;
- (c) any relevant guidelines issued by the Financial Intelligence Unit.

(3) Except as provided in subsection (4), subsection (1) shall not apply unless, within twenty-one days after the service of the summons, or within such further time as the court may allow, the defendant has delivered to the prosecutor a written notice —

- (a) stating that the defendant intends to rely on subsection (1); and
- (b) specifying the reasonable steps that the defendant will claim to have taken.

(4) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (3) shall not, except with the leave of the court, be admissible for the purpose of supporting a defence under subsection (1).

Application of information.

**22.** Any information contained in a suspicious transaction report shall be deemed to be obtained only for the following purposes —

- (a) the detection, investigation, and prosecution of offences against this Act;
- (b) the enforcement of the Proceeds of Crime Act;
- (c) the detection, investigation, and prosecution of any relevant offence (within the meaning of the Proceeds of Crime Act), in any case where that offence may reasonably give rise to, or form the basis of, any proceedings under that Act;
- (d) the administration of —
  - (i) the Mutual Legal Assistance (Criminal Matters) Act;
  - (ii) the Financial Intelligence Unit Act;
  - (iii) the Criminal Justice (International Co-operation) Act.

Ch. 93.

Ch. 93.

Ch. 98.

Ch. 367.

Ch. 105.

## PART IV

### RETENTION ON RECORDS

Obligation to keep transaction records.

**23.** (1) In relation to every transaction that is conducted through a financial institution, that financial institution shall keep such records as are reasonably necessary to enable that transaction to be readily reconstructed by the Financial Intelligence Unit.

- (2) Without limiting the generality of subsection (1), such records shall contain the following information —
- (a) the nature of the transaction;

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

(3) Every financial institution shall retain the records kept by that financial institution, in accordance with this section, in relation to a transaction for a period of not less than five years after the completion of that transaction.

**24.** (1) In respect of each case in which a financial institution is required by section 6, 7, 8, 9 or 11 to verify the identity of any person, that financial institution shall keep such records as are reasonably necessary to enable the nature of the evidence used for the purposes of that verification to be readily identified by the Financial Intelligence Unit.

Obligation to keep verification records.

(2) Without limiting the generality of subsection (1), such records may comprise —

- (a) a copy of the evidence so used; or
- (b) where it is not practicable to retain that evidence, such information as is reasonably necessary to enable that evidence to be obtained.

(3) Notwithstanding anything in subsections (1) and (2), in respect of each case in which a financial institution, in reliance on the provisions of subsection (3) or (4) of section 11, verifies the identity of any person by confirming the existence of a facility provided by another financial institution, the first-mentioned financial institution shall keep such records as are reasonably necessary to enable —

- (a) the identity of the other financial institution;
- (b) the identity of that facility; and
- (c) the identity confirmation of the person,

to be readily identified at any time by the Financial Intelligence Unit.

(4) Every financial institution shall retain the records kept by that financial institution, in accordance with this section, for the following periods —

- (a) in the case of records relating to the verification of the identity of any person in relation to any facility, where the verification is carried out for the purposes of section 6, for a period of not less than five years after that person ceases to be a facility holder in relation to that facility;
- (b) in the case of records relating to the verification of the identity of any person in relation to any facility, where —
  - (i) that person is not a facility holder in relation to that facility, and
  - (ii) the verification is carried out, for the purposes of section 9, with respect to a person who is such a facility holder,
 for a period of not less than five years after that facility holder ceases to be a facility holder in relation to that facility;
- (c) in the case of any other records relating to the verification of the identity of any person, for a period of not less than five years after the verification is carried out.

*S.I. 128/2001.*

Obligation to keep prescribed records.

**25.** Every financial institution shall keep such records as may be prescribed by regulations made under section 51 and shall retain them for such period as may be prescribed by such regulations.

*S.I. 128/2001.*

How records to be kept.

**26.** Records required by section 23, 24 or 25 to be kept by any financial institution shall be kept either in written form in the English language, or so as to enable the records to be readily accessible and readily convertible into written form in the English language.

When records need not be kept by a Financial Institution.

**27.** (1) Subject to subsection (2), nothing in section 23, 24 or 25 requires the retention of any records kept by a financial institution (being a company) in any case where that financial institution has been liquidated and finally dissolved.

*36 of 2008, s. 10.*

(2) The liquidator of a financial institution referred to in subsection (1) shall maintain for the balance of the prescribed period remaining at the date of dissolution such records that would otherwise have been required to be kept by the financial institution but for the liquidation.

Destruction of records.

**28.** (1) Subject to subsection (2) every financial institution shall ensure that —

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- (a) every record retained by that financial institution pursuant to any provision of this Part; and
  - (b) every copy of any such record,

is destroyed as soon as practicable after the expiry of the period for which the financial institution is required, by any provision of this Part, to retain that record.

(2) Nothing in this section requires the destruction of any record, or any copy of any record, in any case where there is a lawful reason for retaining that record.

(3) Without limiting the generality of subsection (2), there is a lawful reason for retaining a record if the retention of that record is necessary —

- (a) in order to comply with the requirements of any other written law;
- (b) to enable any financial institution to carry on its business; or
- (c) for the purposes of the detection, investigation or prosecution of any offence.

**29.** Nothing in this Part limits or affects any other written law that requires any financial institution to keep or retain any record. Other laws not affected.

**30.** (1) Every financial institution commits an offence against this section which in contravention of section 23, 24 or 25 fails, without reasonable excuse, to retain or to properly keep records sufficient to satisfy the requirements of the section. Offences.

(2) Every financial institution which commits an offence against this section is liable on summary conviction to a fine not exceeding —

- (a) in the case of any individual, twenty thousand dollars;
- (b) in the case of a body corporate, one hundred thousand dollars.

## PART V SEARCH WARRANTS

**31.** Any Magistrate who, on an application in writing made on oath, is satisfied that there are reasonable grounds for believing that there is in or on any place or thing — Search warrants.

- (a) any thing upon or in respect of which any offence against this Act or any regulations made under this Act has been, or is suspected of having been, committed;
- (b) any thing which there are reasonable grounds for believing will be evidence as to the commission of any such offence; or
- (c) any thing which there are reasonable grounds for believing is intended to be used for the purpose of committing any such offence,

may issue a search warrant in respect of that thing.

**32.** (1) Every search warrant shall be in the prescribed form.

Form and content of search warrant.

(2) Every search warrant shall be directed to any member of the Police by name, or to any class of members of the Police specified in the warrant, or generally to every member of the Police.

(3) Every search warrant shall be subject to such special conditions (if any) as the person issuing the warrant may specify in the warrant.

(4) Every search warrant shall contain the following particulars —

- (a) the place or thing that may be searched pursuant to the warrant;
- (b) the offence or offences in respect of which the warrant is issued;
- (c) a description of the articles or things that are authorised to be seized;
- (d) the period during which the warrant may be executed, being a period not exceeding fourteen days from the date of issue;
- (e) any conditions specified pursuant to subsection (3).

Powers conferred by warrant.

**33.** (1) Subject to any special conditions specified in a warrant pursuant to section 32(3) every search warrant shall authorise the member of the Police executing the warrant —

- (a) to enter and search the place or thing specified in the warrant at any time by day or night during the currency of the warrant;

*17 of 2001, s. 8.*

- (b) to use such assistance as may be reasonable in the circumstances for the purpose of the entry and search;
  - (c) to use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place searched;
  - (d) to search for and seize any thing referred to in any of paragraphs (a) to (c) of section 31; and
  - (e) in any case where any thing referred to in any of those paragraphs is a document —
    - (i) to take copies of the document, or extracts from the documents;
    - (ii) to require any person who has the document in his or her possession or under his or her control to reproduce, or to assist the person executing the warrant to reproduce, in usable form, any information recorded or stored in the document.
- (2) Every person called upon to assist any member of the Police executing a search warrant shall have the powers described in paragraphs (c) and (d) of subsection (1).

**34.** Every member of the Police executing any search warrant —

- (a) shall have that warrant with him or her;
- (b) shall produce it on initial entry and, if requested, at any subsequent time; and
- (c) shall, if requested at the time of the execution of the warrant or at any subsequent time, provide a copy of the warrant within seven days after the request is made.

Person executing warrant to produce evidence of authority.

**35.** Every member of the Police who executes a search warrant shall, not later than seven days after the seizure of any thing pursuant to that warrant, give to the owner or occupier of the place or thing searched, and to every other person whom the member of the Police has reason to believe may have an interest in the thing seized, a written notice specifying —

Notice of execution of warrant.

- (a) the date and time of the execution of the warrant;
- (b) the identity of the person who executed the warrant;
- (c) the thing seized under the warrant.

Custody of  
property seized.

**36.** Where property is seized pursuant to a search warrant, the property shall be kept in the custody of a member of the Police, except while it is being used in evidence or is in the custody of any court, until it is dealt with in accordance with another provision of this Act.

Procedure where  
certain  
documents  
seized.  
Ch. 91.

**37.** Section 70 of Criminal Procedure Code, so far as applicable and with all necessary modifications, shall apply in respect of the seizure of any documents under any search warrant as if the search warrant had been issued under section 70 of that Act.

Disposal of  
things seized.

**38.** (1) This section shall apply with respect to anything seized under a search warrant.

(2) In any proceedings for an offence relating to any thing seized under a search warrant, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in such manner as the court thinks fit.

(3) Any member of the Police may at any time, unless an order has been made under subsection (2), return the thing to the person from whom it was seized, or apply to a Magistrate for an order as to its disposal; on any such application, the Magistrate may make any order that a court may make under subsection (2).

(4) If proceedings for an offence relating to the thing are not brought within a period of three months of seizure, any person claiming to be entitled to the thing may, after the expiration of that period, apply to a Magistrate for an order that it be delivered to him or her; on any such application, the Magistrate may adjourn the application, on such terms as he or she thinks fit, for proceedings to be brought, or may make any order that a court may make under subsection (2).

(5) Where any person is convicted in any proceedings for an offence relating to anything in respect of which a search warrant has been issued enabling seizure, and any order is made under this section, the operation of the order shall be suspended —

- (a) in any case until the expiration of the twenty-one days for the filing of notice of appeal or an application for leave to appeal;
- (b) where notice of appeal is filed within the time so prescribed, until the determination of the appeal; and

(c) where application for leave to appeal is filed within the time so prescribed, until the application is determined and, where leave to appeal is granted, until the determination of the appeal.

(6) Where the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

## PART VI COMPLIANCE COMMISSION

**39.** (1) There is hereby established a body to be known as the Compliance Commission for the purpose of ensuring compliance with the provisions of this Act. Establishment of Commission.

(2) The Commission shall be a body corporate having perpetual succession and a common seal with power to enter into contracts and do all such things necessary for the purpose of its functions.

**40.** The Commission shall consist of three members, appointed by the Governor-General in writing, being persons appearing to the Governor-General to have wide experience in, and to have shown capacity in, financial and commercial matters, industry, law or law enforcement. Membership of Commission.

**41.** The members of the Commission may be appointed for a term of three years and be eligible for reappointment. Term of appointment.

**42.** A person may not be appointed a member or remain a member of the Commission who — Exclusion from membership.

- (a) is a member of either House of Parliament;
- (b) is a director, officer or servant of, or has a controlling interest in, any financial institution.

**43.** The functions of the Commission are — Functions of the Commission.

- (a) to maintain a general review of financial institutions in relation to the conduct of financial transactions and to ensure compliance with the provisions of this Act;
- (b) when deemed necessary by the Commission, at the expense of the financial institution, to conduct on-site examinations of the business of the financial institution for the purpose of ensuring compliance with the provisions of this *20 of 2007, s. 2.*

Act, and in such cases where the Commission is unable to conduct such examination, to appoint an auditor at the expense of the financial institution to conduct such examination and to report thereon to the Commission.

Production of records.  
17 of 2001,  
s. 9.

**44.** (1) In the performance of its duties under this Act the Commission may at all reasonable times —

- (a) require the financial institution to produce for examination such records that are required to be kept pursuant to sections 23, 24 and 25; and
- (b) require a financial institution to supply such information or explanation, as the Commission may reasonably require for the purpose of enabling the Commission to perform its functions under this Act.

17 of 2001,  
s. 9.

(2) Any person failing or refusing to produce any record or to supply any information or explanation as is required by subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Confidentiality.  
17 of 2001, s. 10.

**45.** (1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or adviser of the Commission who discloses any information relating to —

- (a) the affairs of the Commission;
- (b) the affairs of a financial institution; or
- (c) the affairs of a customer or client of a financial institution,

that it or he has acquired in the course of its or his duties or in the exercise of the Commission's functions under this or any other law, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

- (2) Subsection (1) shall not apply to a disclosure —
  - (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
  - (b) for the purpose of assisting the Commission to exercise any functions conferred on it by this Act, by any other Act or by regulations made thereunder;

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- (c) in respect of the affairs of a financial institution or of a customer or client of a financial institution, with the consent of the financial institution, customer or client, as the case may be, which consent has been voluntarily given;
  - (d) where the information disclosed is or has been available to the public from any other source;
  - (e) where the information disclosed is in a manner that does not enable the identity of any financial institution or of any customer or client of a financial institution to which the information relates to be ascertained;
  - (f) to a person with a view to the institution of, or for the purpose of —
    - (i) criminal proceedings;
    - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties;
    - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Commission of his duties; or
  - (g) in any legal proceedings in connection with —
    - (i) the winding-up or dissolution of a financial institution; or
    - (ii) the appointment or duties of a receiver of a financial institution.

(3) Subject to subsection (6), the Commission may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(4) In deciding whether or not to exercise its power under subsection (3), the Commission may take into account —

- (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and

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(b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.

(5) The Commission may decline to exercise its power under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Commission considers appropriate.

(6) Nothing in subsection (3) authorises a disclosure by the Commission unless —

(a) the Commission has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or

(b) the Commission has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission; and

(c) the Commission is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and

(d) the Commission is satisfied that information provided following the exercise of its power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Commission it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Commission shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such

proceedings, arising directly or indirectly from any such request.

(8) The Commission may cooperate with any other regulatory authority in The Bahamas, including, by sharing information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law where it considers such cooperation or information may be relevant to the function of such other regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector. *20 of 2007, s. 3.*

(9) In this section —

“overseas regulatory authority” means an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Commission.

**46.** (1) For the purposes of this Part “financial institution” means those institutions specified in paragraphs (c), (d), (g), (h), (j), (k) and (l) of section 3 that are not otherwise subject to regulation in respect of the prescribed activities under these paragraphs by the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Registrar of Insurance Companies, or the Inspector of Financial and Corporate Services. *Meaning of financial institution. 36 of 2008, s. 11.*

(2) Upon the recommendation of the Commission, the Minister may by order designate any professional body, association, or entity —

- (a) with statutory authority to regulate the activities of its members; and
- (b) which represents a sector of financial institutions as defined in subsection (1),

with authority to ensure compliance with the provisions of this Act upon the terms stipulated by the Commission.

**47.** (1) The Commission may from time to time after consultation with the Inspector, The Bahamas Bar Council, The Bahamas Institute of Chartered Accountants, the Financial Intelligence Unit and such other bodies and organisations representative of such financial institutions as are required to be regulated under this Act, issue such codes of practice as the Commission thinks necessary — *Codes of practice. 36 of 2008, s. 12.*

- (a) 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 financial institutions;

(b) generally for the purposes of this Act.

*36 of 2008, s. 12.*

(2) Where a financial institution violates or fails to comply with any provision in the codes of practice issued pursuant to this section, it shall be subject to —

(a) any sanctioning powers that its Supervisory Authority may possess to deal with the violation or non-compliance; and

*Sub. Leg. Vol. VI., Ch.367.*

(b) prosecution pursuant to regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations in order to enforce the codes of practice.

## PART VII MISCELLANEOUS PROVISIONS

*Liability of employers and principals.*

**48.** (1) Subject to subsection (3), anything done or omitted by a person as the employee of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.

(2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person's express or implied authority, precedent or subsequent.

*17 of 2001, s. 11.*

(3) In any proceedings under this Act against any person in respect of anything alleged to have been done or omitted to be done by an employee or agent of that person, it shall be a defence for that person to prove that he or she or it took such steps as were reasonably practicable to prevent the employee or agent, as the case may be, from doing or omitting to do such thing.

*Directors and officers of bodies corporate.*

**49.** Where any body corporate is convicted of an offence against this Act or any regulations made under this Act, every director and every officer concerned in the management of the body corporate shall be guilty of the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission or consent.

**50.** (1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any contract or agreement.

Non-compliance not excused by contractual obligations.

(2) No person shall be excused from compliance with any requirement of this Act by reason only that compliance with that requirement would constitute breach of any contract or agreement.

**51.** The Minister may from time to time make regulations for all or any of the following purposes —

Regulations.

- (a) prescribing the forms of application, reports and other documents required under this Act;
- (b) prescribing amounts that are required to be prescribed for the purposes of Part II;
- (c) prescribing, for the purposes of section 25 records to be kept and retained by financial institutions, or any specified class or classes of financial institutions, and the periods for which those records are to be retained;
- (d) exempting or providing for the exemption of any transaction or class of transactions from all or any of the provisions of this Act;
- (e) prescribing, for the purposes of this Act, or any provision or provisions of this Act, what accounts and arrangements shall be deemed to be or not to be facilities, and the circumstances and conditions in which any account or arrangement shall be deemed to be or not to be a facility;
- (f) prescribing, for the purposes of this Act, or any provision or provisions of this Act, what persons or classes of persons shall be deemed to be or not to be financial institutions, and the circumstances and conditions in which any persons or classes of persons shall be deemed to be or not to be financial institutions;
- (g) prescribing, for the purposes of this Act, or any provision or provisions of this Act, what transactions shall be deemed to be or not to be occasional transactions, and the circumstances and conditions in which any transaction shall be deemed to be or not to be an occasional transaction;
- (h) prescribing the manner in which any notice or other document required by this Act to be given or served by, or to or on, any person is to be so given or served;

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- (i) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding two thousand dollars, that may, on conviction, be imposed in respect of any such offences;
  - (j) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for their due administration.

*17 of 2001, s. 12*

### **FIRST SCHEDULE**

(Section 2(1))

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

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2. The Minister may by order add to, or delete from, the list of countries mentioned in this Schedule.

## **SECOND SCHEDULE**

(Section 14(2)(b))

### **DETAILS TO BE INCLUDED IN SUSPICIOUS TRANSACTION REPORT**

1. The name, address, date of birth, and occupation (or, where appropriate, business or principal activity) of each person conducting the transaction (if known to the person making the report).
2. The name, address, date of birth, and occupation (or, where appropriate, business or principal activity) of any person on whose behalf the transaction is conducted (if known to the person making the report).
3. Where an account with a financial institution is involved in the transaction —
  - (a) the type and identifying number of the account;
  - (b) the name of the person in whose name the account is operated;
  - (c) the names of the signatories to the account.
4. The nature of the transaction.
5. The amount involved in the transaction.
6. The type of currency involved in the transaction.
7. The date of the transaction.
8. In relation to the financial institution through which the transaction was conducted, the name of the officer, employee, or agent of that financial institution who handled the transaction.
9. The name of the person who prepared the report.