

# FINANCIAL INTELLIGENCE UNIT BILL, 2023

## Arrangement of Sections

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# FINANCIAL INTELLIGENCE UNIT BILL, 2023

## A BILL FOR AN ACT TO PROVIDE FOR THE CONTINUATION OF THE FINANCIAL INTELLIGENCE UNIT AND TO REPEAL AND REPLACE THE FINANCIAL INTELLIGENCE UNIT ACT

Enacted by the Parliament of The Bahamas

### PART I - PRELIMINARY

#### 1. Short title and commencement.

- (1) This Act may be cited as the Financial Intelligence Unit Act, 2023.
- (2) This Act shall come into force on a date to be appointed by the Minister by notice published in the *Gazette*.

#### 2. Interpretation.

In this Act —

- “**Anti-Terrorism Act**” means the Anti-Terrorism Act, 2018 (*No.27 of 2018*);
- “**compliance notice**” means the notice issued pursuant to section 19;
- “**counsel and attorney**” has the same meaning ascribed to it in section 2 of the Legal Profession Act (*Ch. 64*);
- “**Deputy Director**” means the Deputy Director of the Financial Intelligence Unit, appointed pursuant to section 5;
- “**Director**” means the Director of the Financial Intelligence Unit, appointed pursuant to section 4;
- “**financial institution**” has the meaning as ascribed to it in section 3 of the Financial Transactions Reporting Act;
- “**Financial Intelligence Unit**” means the Financial Intelligence Unit continued under section 3;

“**Financial Transaction Reporting Act**” means the Financial Transaction Reporting Act, 2018 (*No. 5 of 2018*);

“**foreign financial intelligence unit**” means such body or bodies in another jurisdiction which performs functions similar to those of the Financial Intelligence Unit and designated by the Minister in accordance with section 8;

“**IRF Steering Committee**” has the meaning as ascribed to it in section 6 of the Proceeds of Crime Act;

“**Minister**” means the Minister responsible for the administration of this Act;

“**Proceeds of Crime Act**” means the Proceeds of Crime Act, 2018 (*No. 4 of 2018*);

“**Supervisory Authority**” has the meaning as ascribed to it in section 2 Financial Transactions Reporting Act.

## **PART II – ADMINISTRATION**

### **3. Continuation of the Financial Intelligence Unit.**

The body known and existing as the Financial Intelligence Unit and established under section 3 of the Financial Intelligence Unit Act (*Ch. (367)*), is hereby preserved and continues in existence as the Financial Intelligence Unit having perpetual succession and a common seal with power to enter into contracts and to do all such things necessary for the purpose of its functions.

### **4. Appointment of Director.**

- (1) The Minister shall, appoint in writing a Director who shall be the chief executive officer of the Financial Intelligence Unit.
- (2) The appointment of the Director shall be subject to the provisions of this Act and such other terms and conditions specified in writing by the Minister.

### **5. Staff of the Financial Intelligence Unit.**

- (1) The following appointments by the minister shall apply —
  - (a) Deputy Director;
  - (b) Counsel and Attorney.
- (2) The Director shall engage such number of consultants, having suitable qualifications and experience to provide services to the Financial Intelligence Unit, appointed in writing by the Minister after consultation with the Director;

- (3) The Director shall —
  - (a) employ such number of permanent and temporary staff;
  - (b) engage such number of police officers;
  - (c) engage such number of public servants on secondment, having suitable qualifications and experience to provide services to the Financial Intelligence Unit, who shall comprise the Financial Intelligence Unit.
- (4) The *First Schedule* shall have effect with respect to the Director and otherwise in relation to the Financial Intelligence Unit.

## **6. Assignment of police officers to the Financial Intelligence Unit.**

- (1) The Director may request the Commissioner of Police to assign suitably qualified officers of the Royal Bahamas Police Force to the Financial Intelligence Unit.
- (2) An officer assigned to the Financial Intelligence Unit shall be required to act on the instructions of the Director.

## **7. Functions of the Financial Intelligence Unit.**

- (1) In the exercise of its functions under subsection (2), the Financial Intelligence Unit shall act as the agency responsible for receiving, analysing, obtaining and disseminating information which relates to or may relate to the proceeds of the offences specified in the *Second Schedule*.
- (2) Without limiting the foregoing and notwithstanding any other law to the contrary, the Financial Intelligence Unit —
  - (a) shall receive all disclosures of information such as are required to be made pursuant to —
    - (i) the Proceeds of Crime Act;
    - (ii) the Financial Transactions Reporting Act;
    - (iii) the Anti-Terrorism Act; and
    - (iv) any other Act which is relevant to its functions, including information from any foreign financial intelligence unit;
  - (b) may upon the receipt of any disclosure as are referred to in paragraph (a) inclusive of disclosures or requests from any foreign financial intelligence unit or any law enforcement authority, order any person to refrain from conducting any transaction on an account by issuing a freeze order for a period up to but not exceeding fourteen days, if satisfied that the request relates to proceeds of any offences or suspected offences specified in the *Second Schedule*.

- (c) may require, within a period not exceeding fourteen working days, the production of all relevant information excluding information subject to legal professional privilege that the Financial Intelligence Unit considers necessary to fulfil its functions;
- (d) shall retain a record of all information that it receives for a minimum of five years after the information is received;
- (e) shall provide information, subject to such conditions as may be determined by the Director, to the Commissioner of Police where the information may relate to any offence or suspected offence specified in the *Second Schedule*;
- (f) may provide information, subject to any conditions as may be appropriate, by the Director, to a foreign financial intelligence unit where the information may relate to any offence or suspected offence specified in the *Second Schedule*;
- (g) shall, where the Director considers it necessary, coordinate, cooperate and exchange information with —
  - (i) a Supervisory Authority;
  - (ii) the IRF Steering Committee;
  - (iii) any department of government or any such person or statutory body, that has a part of its functions, a requirement to regulate financial institutions;
- (h) may, where the Director considers it necessary or desirable for the discharge or performance of the functions of the Financial Intelligence Unit, enter into a written agreement or arrangement with —
  - (i) a foreign financial intelligence unit;
  - (ii) a Supervisory Authority;
  - (iii) the IRF Steering Committee; or
  - (iv) any department of government or any other body that has oversight of anti-money laundering, countering the financing of terrorism and countering the financing of proliferation policies;
- (i) shall inform the public and financial institutions of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of offences specified in the *Second Schedule*.

## **8. Designation of foreign financial intelligence unit.**

The Minister may by order designate a body in another jurisdiction which performs functions similar to those of the Financial Intelligence Unit as a foreign financial intelligence unit for the purposes of this Act.

**9. Appeal to discharge freeze order.**

A person aggrieved by a freeze order made in accordance with section 7(2)(b) may apply to a judge in chambers to discharge the order of the Financial Intelligence Unit and shall serve notice on the Financial Intelligence Unit to join in the proceedings but such order shall remain in full force and effect until the judge determines otherwise.

**10. Directions of the Minister.**

The Minister may give to the Financial Intelligence Unit, directions in writing of a general nature as to the policy to be followed by the Financial Intelligence Unit in the performance of its functions as appear to the Minister to be requisite in the public interest and the Financial Intelligence Unit shall give effect to those directions.

**11. Prohibition against provision of information by Financial Intelligence Unit.**

Notwithstanding the provisions of any other Act no order for the provision of information, documents or evidence may be issued in respect of the Financial Intelligence Unit or against the Minister, Director, officers or personnel of the Financial Intelligence Unit or any person engaged pursuant to this Act.

**12. Protection of officers, etc.**

- (1) No action shall lie against the Minister, Director, officers or personnel of the Financial Intelligence Unit or any person acting under the direction of the Director for anything done or omitted to be done in good faith and in the administration or discharge of any functions, duties or powers under this Act.
- (2) No proceedings for breach of banking or professional confidentiality may be instituted against any person or against directors or employees of a financial institution who in good faith transmit information or submit reports to the Financial Intelligence Unit in accordance with —
  - (a) the Proceeds of Crime Act;
  - (b) the Financial Transactions Reporting Act;
  - (c) the Anti-Terrorism Act; or
  - (d) under this Act or any other law.
- (3) No civil or criminal liability action may be brought nor any professional sanction may be taken against any person or against directors or employees of a financial institution who in good faith transmit information or submit reports to the Financial Intelligence Unit.

**13. Confidentiality.**

- (1) Any person who obtains information in any form as a result of his connection with the Financial Intelligence Unit shall not disclose that information to any person except so far as it is required or permitted under this Act or any other written law.
- (2) Any person who communicates any information in breach of subsection (1), commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

**14. Annual report.**

- (1) The Director shall —
  - (a) from time to time advise the Minister on the work of the Financial Intelligence Unit and in particular on matters that could affect public policy or the priorities to be set by the Financial Intelligence Unit; and
  - (b) prepare and submit to the Minister on or before the 30<sup>th</sup> of June in each year an annual report reviewing the work of the Financial Intelligence Unit.
- (2) The Minister shall lay or cause to be laid a copy of every annual report on the table of both Houses of Parliament.

## **PART III – FINANCIAL PROVISIONS**

**15. Funds and resources.**

The funds and resources of the Financial Intelligence Unit shall consist of —

- (a) any moneys as may from time to time be provided by Parliament; and
- (b) any fee, charge or penalty collected by the Financial Intelligence Unit in accordance with this Act or any other law.

**16. Surplus funds.**

- (1) Subject to subsection (2), the Financial Intelligence Unit shall at the end of each financial year pay into the Consolidated Fund all excess of revenue over expenditure standing to the credit of the Financial Intelligence Unit.
- (2) The Minister of Finance may, at the end of the financial year, authorise the Financial Intelligence Unit to reserve from surplus funds for current



budgetary purposes or otherwise such sums, if any, as the Minister may determine.

**17. Annual budget.**

The Financial Intelligence Unit shall prepare for each new financial year, an annual budget of revenue and expenditure which shall be submitted to the Minister at least two months prior to the commencement of the financial year.

**18. Accounts and audit.**

- (1) The Financial Intelligence Unit shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year a statement of accounts.
- (2) The accounts of the Financial Intelligence Unit for each financial year shall be audited by an auditor to be appointed by the Director with the approval of the Minister.
- (3) As soon as the accounts have been audited the Financial Intelligence Unit shall submit a copy thereof to the Minister together with a copy of any report made by the auditor.
- (4) The Minister shall lay a copy of every such audited accounts before each House of Parliament, together with a copy of any report made by the auditor on the accounts.

## **PART IV – ENFORCEMENT**

**19. Compliance notice.**

- (1) The Director may issue a compliance notice to a financial institution who has failed to comply with a requirement of this Act.
- (2) The compliance notice shall —
  - (a) be made in writing;
  - (b) specify the requirement that the financial institution has failed to comply with;
  - (c) require the financial institution to comply with the notice;
  - (d) specify the period by which compliance is required; and
  - (e) specify any other conditions for compliance as the Director may consider necessary.
- (3) The issuance of a compliance notice shall not prohibit the imposition of a penalty in accordance with this Act.

**20. Administrative penalty.**

- (1) The Director may impose an administrative penalty upon a financial institution if after the expiration of the period specified in the compliance notice issued in accordance with section 19, that the financial institution has failed to comply with the directions in that compliance notice.
- (2) An administrative penalty —
  - (a) shall be made in writing;
  - (b) state that the financial institution has failed to comply with a compliance notice;
  - (c) order the financial institution to pay to the Financial Intelligence Unit, a penalty not exceeding one thousand dollars for every day from the date the financial institution was required to comply with the compliance notice to the date the financial institution rectifies the non-compliance.

**21. Appeal from imposition of administrative penalty.**

Any person who is aggrieved by the imposition of an administrative penalty under section 20 may appeal the imposition of that penalty to the Supreme Court.

## **PART V - MISCELLANEOUS**

**22. Regulations.**

- (1) The Minister, after consultation with the Financial Intelligence Unit, may make such regulations for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1), such regulations may in particular —
  - (a) require financial and other institutions as may be prescribed to establish and maintain procedures relating to the identification of clients, the keeping of records, the making of reports and training;
  - (b) prescribe summary offences and penalties for failing to comply with the regulations or guidelines issued under this Act, or with guidelines, codes of practice or other instructions issued by a relevant agency;
  - (c) prescribe all matters required or permitted by this Act to be prescribed.

### **23. Guidelines.**

- (1) Subject to section 24, the Financial Intelligence Unit shall from time to time issue, in respect of each kind of financial institution to which the Financial Transactions Reporting Act applies, guidelines —
  - (a) setting out any features of a transaction that may give rise to a suspicion that the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act;
  - (b) setting out any circumstances in which a suspicious transaction report relating to such a transaction may be made orally in accordance with section 14(3) of the Financial Transactions Reporting Act and the procedures for making such an oral report.
- (2) Suspicious transaction guidelines shall be issued in such manner as the Financial Intelligence Unit shall from time to time determine.
- (3) Without limiting subsection (1), suspicious transaction guidelines issued under this section may relate to one or more kinds of financial institution and such guidelines may make different provisions for different kinds of financial institutions and different kinds of transactions.

### **24. Consultation on proposed guidelines.**

- (1) The Financial Intelligence Unit shall, before issuing any suspicious transaction guidelines —
  - (a) consult with, and invite representations from —
    - (i) the Central Bank of The Bahamas;
    - (ii) the Securities Commission;
    - (iii) the Compliance Commission;
    - (iv) the Insurance Commission;
    - (v) the Gaming Board; and
    - (vi) such other agency or entity as the Minister may by order designate,and shall have regard to any such representations;
  - (b) give public notice of the Financial Intelligence Unit's intention to issue the guidelines, which notice shall contain a statement —
    - (i) indicating the Financial Intelligence Unit's intention to issue the guidelines; and
    - (ii) inviting financial institutions that are likely to be affected by the proposed guidelines, and industry organisations that are representative of those financial institutions, to express to the Financial Intelligence Unit, within such reasonable period as is specified in the notice, their interest in being consulted in the course of the development of the guidelines; and

- (c) consult with, and invite representations from, any financial institution and industry organisation which expresses such an interest, and shall have regard to any such representations.
- (2) Nothing in subsection (1), prevents the Financial Intelligence Unit from adopting any additional means of publicising the proposal to issue any suspicious transaction guidelines or of consulting with interested parties in relation to such a proposal.

**25. Financial Intelligence Unit to make guidelines available.**

On request by any financial institution in respect of which any suspicious transaction guidelines are for the time being in force, or by any industry organisation that represents any such financial institution, the Financial Intelligence Unit shall, without charge —

- (a) make those guidelines, and all amendments to those guidelines, available for inspection, by that financial institution or, as the case requires, that industry organisation, at its offices; and
- (b) provide copies of those guidelines, and all amendments to those guidelines, to that financial institution, or, as the case requires, that industry organisation.

**26. Obligation to review of guidelines.**

- (1) The Financial Intelligence Unit shall from time to time review any suspicious transaction guidelines for the time being in force.
- (2) Section 24 shall apply in relation to any such review as if the review were a proposal to issue suspicious transaction guidelines.

**27. Savings and transitional.**

The persons serving as Director and staff of the Financial Intelligence Unit on the date of coming into force of this Act shall continue in office and shall be for the purposes of this Act, as if they had been appointed under this Act on the same terms and conditions until the expiration of their term.

**28. Repeal.**

The Financial Intelligence Unit Act (*Ch. 367*) is hereby repealed.

## **FIRST SCHEDULE**

### **(Section 3(3))**

#### **THE DIRECTOR OF THE FINANCIAL INTELLIGENCE UNIT**

##### **1. Appointment and remuneration of Director.**

- (1) Subject to subparagraph (2) and paragraph 4, the Director shall be appointed to hold office for such term, not exceeding five years, as set out in his instrument of appointment.
- (2) Without prejudice to subparagraph (1), the Director is eligible on the expiration of a first or any subsequent term of office to be re-appointed for a further term not exceeding five years.
- (3) The Director shall receive such remuneration whether by way of salary, honoraria or fees, as may be determined in writing by the Minister.
- (4) If a person ceases to be the Director and it appears to the Minister that there are special circumstances which make it right that the person should receive compensation, the Minister may direct to pay to that person a sum of such amount as the Minister may determine.

##### **2. Role and Term of Office.**

- (1) The Director shall have charge of the day-to-day management and operation of the Financial Intelligence Unit.
- (2) The Director shall not while holding office, hold any other office or employment, whether remunerated or not, without the prior approval of the Minister.
- (3) Subject to subparagraph (1) of this paragraph, a person may not be appointed or remain Director who is a —
  - (a) member of either House of Parliament;
  - (b) public officer; or
  - (c) director, officer or servant of, or has a controlling interest in, any financial institution.

##### **3. Appointment of Acting Director.**

The Minister may appoint, upon the recommendation of the Director, any person eligible to be appointed to act temporarily in the place of the Director who is absent or unable to act.

**4. Resignation or termination of Director.**

- (1) The Director may at any time by notice in writing to the Minister resign his office.
- (2) If the Minister is satisfied that the Director by reason of—
  - (a) bankruptcy or having made arrangements with his creditors;
  - (b) incapacitation due to physical or mental illness;
  - (c) misconduct and gross negligence; or
  - (d) being unable or unfit to discharge the functions of director,the Minister may declare the office of Director vacant and shall notify the fact in such manner as the Minister thinks fit, and thereupon that office shall become vacant.

**SECOND SCHEDULE**

(Section 7(1))

**OFFENCES**

Offences under the Proceeds of Crime Act, 2018 (*No. 4 of 2018*)

Offences under the Anti-Terrorism Act (*No. 5 of 2018*)

Offences under the Currency Declaration Act, 2015 (*No.38 of 2015*)

## OBJECTS AND REASONS

Clauses 1 and 2 of the Bill seek to provide for the preliminary matters of the Bill including the short title and interpretation provisions.

Clause 3 of the Bill seeks to provide for the continuation of the Financial Intelligence Unit as established by section 3 the Financial Intelligence Unit Act, 2000 (*Ch. 367*).

Clause 4 of the Bill seeks to provide for the appointment of a Director of the Financial Intelligence Unit in writing by the Minister.

Clause 5 of the Bill seeks to empower the Minister, in consultation with the Director, to appoint, a Deputy Director, a counsel and attorney of the Financial Intelligence Unit. The Director is further empowered to employ temporary or permanent staff and to engage consultants, police officers or public servants on secondment.

Clause 6 of the Bill seeks to empower the Director to request of the Commissioner of the Royal Bahamas Police Force, the assignment of suitably qualified police officers to the Financial Intelligence Unit. The officers assigned to the Financial Intelligence Unit would be required to act on the instruction of the Director of the Financial Intelligence Unit.

Clause 7 of the Bill seeks to provide for the functions of the Financial Intelligence Unit which include, *inter alia* —

- (a) acting as the agency responsible for receiving, analysing, obtaining and disseminating information which relates to or may relate to the proceeds of the offences specified in the *Second Schedule*;
- (b) receiving all disclosures of information such as are required to be made pursuant to various laws including the Proceeds of Crime Act, the Financial Transaction Reporting Act, and the Anti-Terrorism Act;
- (c) where permitted, issue a freeze in respect of an account thereby restraining a person from conducting any transaction on an account for a period up to fourteen days;

Clause 8 of the Bill seeks to empower the Director to designate a financial intelligence unit of another jurisdiction as a foreign intelligence unit for the purposes of the Bill.

Clause 9 of the Bill seeks to allow for the appeal of an aggrieved person from the imposition of a freeze order issued by the Financial Intelligence Unit.

Clause 10 of the Bill seeks to empower the Minister to give written directions to the Financial Intelligence Unit, generally, regarding the policy to be followed by the Unit in the performance of its functions.

Clause 11 of the Bill seeks to prohibit any officer of the Financial Intelligence Unit from being compelled to provide information. Where such information is provided in accordance with the provisions of the Bill, clause 12 seeks to ensure that an officer performing his duties in good faith is exempt from any criminal or civil liability with regard to the performance of those duties.



Clause 13 of the Bill seeks to restrain an officer or employee hold all information gained by him in the course of his engagement with the Financial Intelligence Unit as confidential and prohibits the unlawful disclosure of any such information.

Clause 14 of the Bill obligates the Financial Intelligence Unit to prepare on an annual basis, a report of its activities for the Minister who shall then lay the report before Parliament.

Clauses 15, 16, 17 and 18 of the Bill seek to provide for the funding and management of the funds of the Financial Intelligence Unit.

Clauses 19 and 20 seek to provide for the process by which persons regulated by the Financial Intelligence Unit are informed of breaches of the law and the appropriate penalty to be paid as a result of a failure to comply with the law.

Clause 21 seeks to enable the Minister to make regulations to provide for, *inter alia* —

- (a) requiring financial and other institutions to establish and maintain procedures on client identification, record keeping, training and report production;
- (b) the creation of summary offences and penalties non-compliance with the Act and guidelines, codes of practice or other instructions issued by a relevant agency.

Clauses 22, 23, 24 and 25 provides for the empowerment of the Financial Intelligence Unit to make guidelines, the imposition of the obligation to seek consultation on the guidelines, the requirement to make such guidelines available and to review the guidelines

Clause 26 of the Bill seeks to save and transition the appointment of persons to the Financial Intelligence Unit prior to the commencement of this Act.

Clause 27 of the Bill seeks to provide for the repeal of the Financial Intelligence Unit Act (*Ch. 367*) and the replacement thereof with this Bill.