



INDUSTRY BRIEFING

FINANCIAL AND CORPORATE SERVICE PROVIDERS

Thursday 26 April 2018
British Colonial Hilton, New Providence



Securities Commission of The Bahamas –
Inspector of Financial and Corporate Services



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OPENING REMARKS

Hon. K. Peter Turnquest

Deputy Prime Minister & Minister of Finance



Securities Commission of The Bahamas –
Inspector of Financial and Corporate Services



LEGISLATIVE DEVELOPMENTS

Christina R. Rolle

Executive Director

Securities Commission of The Bahamas



Securities Commission of The Bahamas –
Inspector of Financial and Corporate Services



PRESENTATION OUTLINE

- **Global Trends & Initiatives**
- **CFATF Priority Actions/National Risk Assessment**
- **Implementation of Risk Based Supervision**
- **Legislative Overhaul Next Steps**



GLOBAL TRENDS & INITIATIVES (OECD)

- Peer Review Focus Areas
 - Identification of beneficial owners
 - Access to accounting records
- Central Register of Beneficial Owners
- Base Erosion & Profit Sharing (BEPS) Minimum Standards
 - Action 5 - Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance
 - Action 6 - Preventing the Granting of Treaty Benefits In Inappropriate Circumstances
 - Action 13 - Transfer Pricing Documentation And Country-by-country Reporting
 - Action 14 - Making Dispute Resolution Mechanisms More Effective



GLOBAL TRENDS & INITIATIVES (CFATF)

Priority Actions:

- Need to Implement Risk Based Supervision
- Lack of AML/CFT specific sanctions
 - Need to demonstrate that sanctions are effective, proportionate and dissuasive; and
 - Need to apply administrative sanctions for breaches.



NATIONAL RISK ASSESSMENT

<u>KEY RISKS</u>	<u>MITIGATING FACTORS</u>
<ul style="list-style-type: none">I. LEGAL PERSONSII. LEGAL ARRANGEMENTSIII. DEPENDENCY ON INTERNATIONAL CLIENTS	<ul style="list-style-type: none">I. COMPREHENSIVE ROBUST AML/CFT REGIMEII. ONGOING REVIEW AND OVERHAUL OF FCSPA



ACTION PLAN

<u>FINANCIAL & CORPORATE SERVICE PROVIDERS</u>	<u>FINANCIAL INSTITUTIONS</u>
<p>I. CONTINUED OVERHAUL OF FCSPA TO DEVELOP SECTOR SPECIFIC AML/CFT RULES</p> <p>II. AML/CFT SANCTIONING REGIME & DISCIPLINARY PROCESS</p> <p>III. INDUSTRY BRIEFINGS ON AML/CFT TYPOLOGIES & ISSUES</p> <p>IV. ENHANCE FOCUS ON CFT & PROLIFERATION OF WEAPONS RISKS</p>	<p>I. CONTINUED AML/CFT PRUDENT RISK MANAGEMENT & DUE DILIGENCE PROTOCOLS - (Identify, monitor, enhance, amend, adjust!)</p> <p>II. MONITORING AND MIRRORING OF INTERNATIONAL DEVELOPMENTS AND CHANGES</p> <p>III. TRAINING</p> <p>IV. COMMUNICATION WITH INSPECTOR</p>



IMPLEMENTATION OF RISK BASED SUPERVISION

- Global move by regulators toward forward looking risk-based approaches to supervision
- Traditional compliance based approaches have demonstrated severe limitations and weaknesses
- Risk based approach shown to provide effective and efficient monitoring and evaluation of licensees
- Primary goal is to identify firms where problems might arise, focus scarce resources on those firms, engage with them to recognise those risks and take mitigating action



RISK BASED SUPERVISION – CONT'D

- Engagement of consultant
- Development and issuance of risk assessment questionnaire to all registrants/licensees
- Development of risk parameters and rating tool
- Phased approach to implementation of framework



LEGISLATIVE OVERHAUL/NEXT STEPS

- Public Consultation, 7 March – 30 April 2018:
 - Financial and Corporate Service Providers (General) Regulations, 2018;
 - Financial and Corporate Service Providers (Application) Regulations, 2018; and
 - Financial And Corporate Service Providers (Fees) Rules, 2018

- Anticipating a single Act with Rules to address specific activities. Additional draft Rules to be issued for consultation.



LEGISLATIVE DEVELOPMENTS

- The Proposed Financial and Corporate Service Providers Legislative Regime, 2018



Presenter: Ms. Odecca Gibson
Legal Counsel, Office of Legal Counsel



AIMS OF PROPOSED FCSPA LEGISLATIVE OVERHAUL

- Establish a robust regulatory regime and eliminate the deficiencies and inconsistencies in the current legislation;
- Enhance the regulatory authority and oversight of the Inspector;
- Clarify and establish clear and distinct categories of activities that are considered financial or corporate services and that are licensable;
- Establish appropriate standards of conduct and obligations for financial and corporate service providers;
- Establish appropriate capital, financial and reporting obligations that are commensurate with the various services being provided; and
- Provide appropriate transitional provisions.



RESULT OF OVERHAULING FCSPA LEGISLATIVE REGIME

REPEAL THE EXISTING LEGISLATIVE REGIME

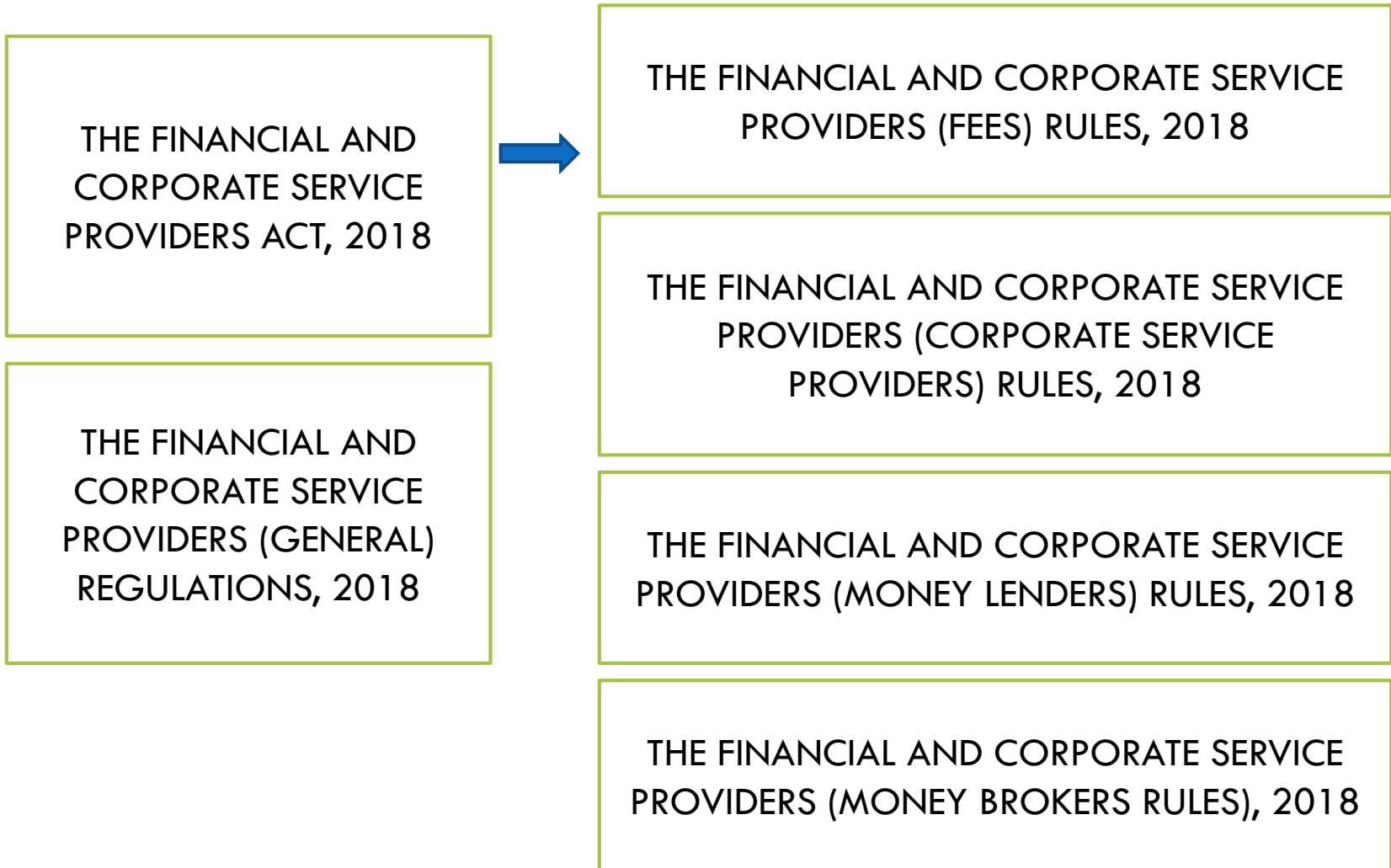
**The Financial
and Corporate
Service
Providers Act,
2000
(Amended
2008)**

**The Financial
and Corporate
Service
Providers
(General)
Regulations,
2001**

**The Financial and
Corporate Service
Providers
(Licence) Order,
2001 (Amended
2009)**



RESULT OF OVERHAULING FCSPA LEGISLATIVE REGIME





RESULT OF OVERHAULING FCSPA LEGISLATIVE REGIME

THE FINANCIAL AND
CORPORATE SERVICE
PROVIDERS ACT, 2017



THE FINANCIAL AND CORPORATE SERVICE
PROVIDERS (CONSUMER CREDIT) RULES,
2018

THE FINANCIAL AND CORPORATE SERVICE
PROVIDERS (BILL PAYING SERVICES) RULES,
2018



EXTERNAL IMPACTS

AML/CFT CODE OF PRACTICE

GUIDELINES ON THE COUNTERING OF THE FINANCING AND THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

MANAGEMENT OF ACCOUNTING RECORDS GUIDELINES, 2018

CRIME RISK MANAGEMENT GUIDELINE

SECURITIES INDUSTRY (COMPLIANCE OFFICER) RULES, 2018



THE FINANCIAL AND CORPORATE SERVICE PROVIDERS BILL, 2018





KEY CHANGES

EXPANDED DEFINITIONS (Part I)

Introduction of activity specific definitions

Delineation between financial services and
corporate services

Application section reinforces delineation between
financial services and corporate services



KEY CHANGES

EXPANDED LICENSING REGIME

(Part II)

Introduction of concept of categorization of activity on licenses

Enhanced licence application process

EXPANDED LICENSING REGIME

(Part II)

Confirmation that licenses are annually renewable

Application of automatic administrative penalty for failing to meet the requirements for annual licence renewal



KEY CHANGES

CONDUCT-FOCUSED REGULATION (Part III)

Express duties on licensees i.e. to maintain professional conduct, to comply and cooperate, etc.

Express requirements concerning the appointment of auditors, the prevention of money laundering

Express requirements to maintain solvency and have adequate financial resources



KEY CHANGES

EXPANDED ENFORCEMENT POWERS (Part IV)

Power to suspend
licence

Power to revoke licence

Power to wind-up
Licensee

Power to apply
administrative penalty

CRIMINAL PENALTIES (Part V)

Unlicensed activity
criminalized

Personal liability of
directors and
corporate liability



KEY CHANGES

ENHANCED ENFORCEMENT POWERS (Part VI)

Introduction of Inspector's Functions

Expanded Powers of the Inspector

Improved Inspection and enhanced
Investigation Powers

Introduction of Power of entry and Power
to require provision of information



KEY CHANGES

TRANSITIONAL (Part VII)

Recognition of consequential
amendments to other
complementary legislation

Continuation of licenses



THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (GENERAL) REGULATIONS, 2018





FINANCIAL AND CORPORATE SERVICE PROVIDERS (GENERAL) REGULATIONS, 2018

LICENSES

(Part II)

Stipulates that applications are to be made on the form set out in the First Schedule

Stipulates that licenses will list the category of licensed activity



FINANCIAL AND CORPORATE SERVICE PROVIDERS GENERAL REGULATIONS, 2018

GENERAL DUTIES AND OBLIGATIONS (Part III)

Duty to:

Make and maintain records

Keep and maintain accounts

Report changes

Seek Commission's approval before
taking certain actions



FINANCIAL AND CORPORATE SERVICE PROVIDERS (GENERAL) REGULATIONS, 2018

GENERAL DUTIES AND OBLIGATIONS

(Part III)

Duty to:

Permit examination and produce documents

Implement data protection measures

Observe confidentiality obligations

Comply with due diligence requirements



FINANCIAL AND CORPORATE SERVICE PROVIDERS (GENERAL) REGULATIONS, 2018

GENERAL DUTIES AND OBLIGATIONS (Part III)

Obligation to:

Implement internal controls to ensure compliance

Deal fairly with clients

Avoid conflicts of interest

Conduct ongoing monitoring of relations with clients

Appoint appropriately skilled staff and Compliance

Officers



SECOND AND THIRD SCHEDULES

ACTIVITY

Executive
Limited
Partnership
Corporate
Services

Registration, Management, Administration of an IBC

Provision of Registered agent/office services to an IBC

Provision of Directors, Officers, or Nominee Shareholders to an IBC

Provision of Partners, Registered agent/office services to ELP

Appointment as Executive Entity Agent

Appointment as Trustee of an Authorized Purpose Trust

Appointment as the Registered Representative of a Foundation

Appointment as Registered Representative of Securities Firm

Appointment as Governing Administrator of ICONs

Appointment as Registered Representative of Private Trust Company

Appointment as Representative of Segregated Accounts Company

**IBC Formation
and
Management**

**Natural
Persons**

**Legal
Persons**





FINANCIAL SERVICE PROVIDERS

ACTIVITY	PROPOSED RULES
MONEY LENDING	MONEY LENDERS RULES
MORTGAGE LENDING	
PAYDAY AND CASH ADVANCES	
CREDIT EXTENSION	FINANCE AND CONSUMER CREDIT RULES
DEBT COLLECTION	
MONEY BROKING	MONEY BROKING SERVICES RULES
MORTGAGE BROKING	
BILL PAYING SERVICES	BILL PAYING SERVICES RULES



THE FINANCIAL AND CORPORATE SERVICE PROVIDERS RULES, 2018





FINANCIAL AND CORPORATE SERVICE PROVIDERS (FEE) RULES, 2018

PRELIMINARY (Part I)

Stipulates the fees payable for applications and renewals

Stipulates commencement date

SCHEDULE

Stipulates Fees for Corporate Services offered by individuals and legal entities

Stipulates Fees for Financial Services



THE MONEY LENDERS RULES - FEATURES

PRELIMINARY (Part I)

Applies to the money lender
and all money lending
contracts

Excludes non-interest loans,
insurance companies, credit
unions, pawnbrokers and
persons deemed non-
resident for exchange control

REGULATION OF MONEY LENDING OPERATIONS (Part II)

Imposes the duties of fair dealing
and responsible lending on money
lenders

Stipulates the minimum terms to be
included in a money lenders contract

Stipulates that only simple interest
can apply to money lenders contracts

Protects borrowers' right to make
additional payments or early
repayments



THE MONEY LENDERS RULES - FEATURES

REGULATION OF MONEY LENDING OPERATIONS

(Part II)

Stipulates how money lenders are to communicate with borrowers, and advertise their products

Prohibits and criminalizes harassment and assault of borrowers

REGULATION OF MONEY LENDER

(Part III)

Prohibits individuals from being money lenders

Stipulates how a money lender is to source funding

Imposes duties on the money lender concerning confidentiality, keeping records, implementing data protection measures, , due diligence, and reporting



THE MONEY LENDERS RULES - FEATURES

REGULATION OF MORTGAGE LENDING OPERATIONS

(Part IV)

Defines what constitutes mortgage lending

Stipulates what can happen with respect to a defaulted mortgage

GENERAL PROVISIONS

(Part V)

Criminalizes non-compliance

Provides for a transition period



THE CONSUMER CREDIT RULES - FEATURES

Preliminary

Part I

Introduces new terms and definitions

Applies to all money lenders, vendors extending credit

Regulates credit extension activity



THE CONSUMER CREDIT RULES - FEATURES

Regulation of Consumer Credit Part II

Stipulates what activity is being regulated

Addresses the minimum terms to be included in a credit agreement

Regulates how debt to a vendor may be recovered



THE DEBT COLLECTOR RULES - FEATURES

REGULATION OF DEBT COLLECTION SERVICES

(Part I/II)

Stipulates what activity is subject to regulation

Defines who may be a debt collector

Stipulates the role of a debt collector

Stipulates what must happen in debt collection activities



THE MONEY BROKERS RULES - FEATURES

PRELIMINARY (Part I)

Defines who is a money broker

Applies to all money brokers and money broking contracts

Exempts persons where money broking is ancillary to a mortgage business, banks and trust companies and real estate brokers.

REGULATION OF MONEY BROKING OPERATIONS/MONEY BROKER

(Part II/VI)

Stipulates minimum terms for money broker's agreement

Imposes duty on money brokers to verify the identity of borrowers, lenders and a borrower's legal authority

Imposes duties on the money broker concerning loan products

Prohibits exclusive arrangements between money brokers and lenders, appraisers and real estate agents or brokers



THE MONEY BROKERS RULES - FEATURES

REGULATION OF MONEY BROKING OPERATIONS

(Part II)

Prohibits inducements for referral of business

Stipulates standard to be applied to advertisement and promotional material

REGULATION OF MORTGAGE BROKING OPERATIONS

(Part III)

Imposes a duty on mortgage brokers to ensure borrower suitability with mortgages

Stipulates the role of mortgage brokers offering appraisal or real estate services

Provides that mortgage brokers have a right of lien



THE MONEY BROKERS RULES - FEATURES

REGULATION OF MORTGAGE BROKING OPERATIONS

(Part III)

Stipulates standards regarding record keeping and the security of records

Stipulates what mortgage brokers must submit to a lender on behalf of a borrower

DISCLOSURES

(Part IV/V)

Stipulates what money brokers must disclose including information about fees, and potential conflicts of interest of

Stipulates general requirements for disclosure including the deadline

Criminalizes failure to disclose



THE MONEY BROKERS RULES - FEATURES

REGULATION OF MONEY BROKERS (Part VI)

Stipulates who may be a
money broker

Stipulates what constitutes
prohibited acts and practices

GENERAL PROVISIONS (Part VII)

Criminalizes non-compliance

Provides for a transition
period



LICENSING UPDATES

- Licensing Categories
- Re-categorisation Process
- Application Tips



Presenter: Mrs. Omara Bingham
Manager, Supervision



CORPORATE SERVICES

- **IBCs:**
Registration, Management, Administration,
Registered Agent, Registered Office,
Directors, Officers, Nominee Shareholders
- **ELPs:** Partners, Registered Agent
- **ICONS:** Governing Administrator
- **Executives Entities:** Agent
- **Private Trust Company:**
Registered Representative
- **Purpose Trusts:** Trustee
- **Segregated Accounts Company:**
Representative
- **Foundations:** Agent
- **SIA Firms:** Outsourced Compliance
Services


FINANCIAL SERVICES


- **Money Lending**
- **Money Broking**
- **Payday and Cash
Advances**
- **Credit Extension**
- **Mortgage Broking**
- **Bill Paying Services**



RE-CATEGORISATION PROCESS

- 
- It is anticipated that the **Re-categorisation/Re-mapping** process will occur during the “**90 Day Transition Period**” following the enactment of the legislation.

- 
- The Re-mapping exercise will determine those activities for which:
 - a Licencee will be now “**only**” be **authorized to perform**;
 - a Licencee will be **billed** (from 2018 onwards)

- 
- The Inspector will notify licencees of their proposed remapped categories.
 - Licencees will be asked to verify and confirm the proposed categories. Where applicable, Licencees may be required to submit additional documentation.
 - Upon completion of the remapping exercise the Inspector will issue new Licence Certificates to transitioning Licencees.



TOP 10 APPLICATIONS TIPS

10.

● **Be Informed.**

- Read the Act and related documents issued by the Inspector.

9.

● **Be aware.**

- Check that the proposed activities fall within the definition of regulated activities that are outlined under the FCSPA.

8.

● **Ensure information is correct.**

- Check that the applicant is submitting the correct application form and has clearly indicated the category for approval, licensing or registration.

TOP 10 APPLICATIONS TIPS

7.

● **Be comprehensive.**

- Provide as much information possible about the applicant's business strategy and rationale.

6.

● **Ensure procedures and controls are relevant.**

- Ensure the all documentation contains the information requested. Office procedures and job descriptions should be relevant to the activities carried out.

AML Procedures: APPLICABLE SECTION(S)	PROPOSED REQUIREMENT (as provided by Section 2.2.1 of the Commission's Guidelines of Money Laundering & Countering of Financing of Terrorism and the adopted Guidelines for Licensees on the Prevention of Money Laundering and Countering the Financing of Terrorism issued by the Central Bank of the Bahamas)
II	Internal Controls, Policies and Procedures (A synopsis of the company's anti-money laundering policies)
III	Risk Rating Customers
IV	Verification of Customer Identity (A summary of the due diligence procedures with respect to the vetting of prospective clients) - (Part II of the FTRA)
VII	Record Keeping (Part IV of the FTRA)
VIII	The Role of the MLRO
IX	Education and training of employees in recognising and reporting suspicious transactions



TOP 10 APPLICATIONS TIPS

5.

● **Ask questions.**

- Check with the Commission if you are unsure of what is required. Discussions and/or meetings can take place prior to the submission of an application.

4.

● **Review the applications.**

- Review all items submitted, even when consultants or legal advisers are engaged. The applicant is the one who knows its business best.

3.

● **Ensure completeness of the application.**

- Complete applications are encouraged to be submitted to the Commission to avoid additional processing times.



TOP 10 APPLICATIONS TIPS

2.

- **Nominate a contact person.**

- Identify a contact person who will be responsible for managing the application process and assisting the Commission with any enquiries.

1.

- **Be responsive.**

- Any requests for additional information or clarification should be provided to the Commission as soon as possible.



TOP 10 APPLICATION TIPS

- 10 Be Informed.**
Read the Act and related documents issued by the Inspector.
- 9 Be aware.**
Check that the proposed activities fall within the definition of regulated activities that are outlined under the FCSPA.
- 8 Ensure information is correct.**
Check that the applicant is submitting the correct application form and has clearly indicated the category for approval, licensing or registration.
- 7 Be comprehensive.**
Provide as much information possible about the applicant's business strategy and rationale.
- 6 Ensure procedures and controls are relevant.**
Ensure the all documentation contains the information requested. Office procedures and job descriptions should be relevant to the activities carried out.
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Check with the Commission if you are unsure of what is required. Discussions and/or meetings can take place prior to the submission of an application.
- 4 Review the applications.**
Review all items submitted, even when consultants or legal advisers are engaged. The applicant is the one who knows its business best.
- 3 Ensure completeness of the application.**
Complete applications are encouraged to be submitted to the Commission to avoid additional processing times.
- 2 Nominate a contact person.**
Identify a contact person who will be responsible for managing the application process and assisting the Commission with any enquiries.
- 1 Be responsive.**
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ONGOING OBLIGATIONS

- Current Reporting Obligations
- Overview of Examination Follow-up Process



Presenter: Ms. Sandra Duncombe
Manager, Supervision



CURRENT FILING OBLIGATIONS

Annual Renewal/Submissions :

• Fees	Annually – by 31 January
• Annual Compliance Confirmation	Annually – by 31 January
• Annual Information Update Form	Annually – by 31 January
• Business License	Annually



OTHER CURRENT OBLIGATIONS

Material Change Reporting:

• Notification – Change in particulars of Licensee	Within 30 days of any change	Section 7
• Approval – Issue, Transfer and Disposal of shares	Immediately	Section 10 (1)
• Approval – Appointment of Directors	Immediately	Section 10 (2)
• Notification – Change of Officers	Immediately	Section 10 (3)

Other Compliance Measures:

• FCSP License to be displayed	Section 8
• Duty to maintain professional conduct	Section 13
• Obligation of a licensee to clients	Section 14 (1), (2), (3) & (4)
• Keeping records of clients	Section 15





EXAMINATION FOLLOW-UP PROCESS

Overview:

- Routine Examination, conducted by an authorized agent or the Inspector
- Examination completed and Routine Examination Report (FCSP Deficiency Report) issued to Licensee by the Inspector
- Initial Follow-up Letter issued
- Outstanding Deficiency Letter issued
- Failure to comply, disciplinary action
- Final Letter issued



INSPECTION MATTERS

- Examination Trends/Deficiencies
- FCSP Risk Rating



Presenter: Ms. Lesley Pearson
Sr. Manager, Risk Analytics & Examinations



SUMMARY POINTS

PROPOSED FCSPA 2018

- 1. An examination can be conducted as deemed necessary by the Inspector.
- 2. The Inspector can appoint auditors to conduct examinations on its behalf.
- 3. Books and records that support the transactions of the company must be kept.
- 4. Any other information that the Inspector requires to complete the examination.



COMMON BREACHES

- **AML training not received by employees of the registrant.**

Financial Intelligence (Transaction Reporting) Regulations, 2001 – Reg. 6 (2)

- **MLRO's approved by The Commission and registered with the FIU.**

Financial Intelligence (Transaction Reporting) Regulations, 2001 – Reg. 5 (a)

- **Compliance Officer shall be identified and appointed**

Financial Intelligence (Transaction Reporting) Regulations, 2001 – Reg. 5 (e)

- **Duty to obtain due diligence from clients**

Financial and Corporate Service Providers Act, 2000 – Section 14 (2)

- **Duty to maintain declaration of availability of accounting records at the registered office.**

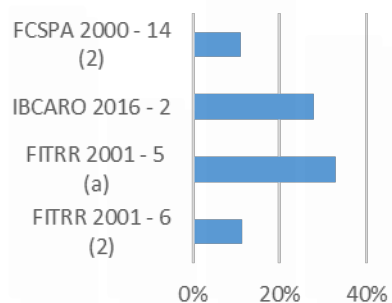
International Business Companies (Accounting Records) Order, 2016

- **Display of License**

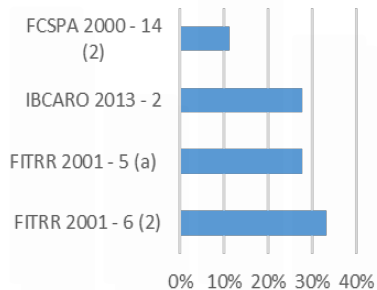
Financial & Corporate Service Providers Act, 2000 – Section 8

COMMON BREACHES

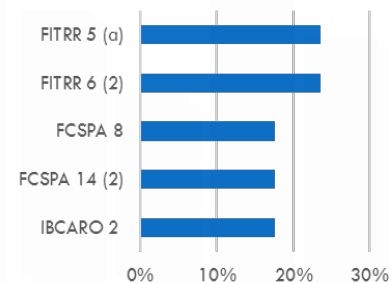
2017 Top Breaches



2016 Top Breaches



2015 Top Breaches



- **FITRR** – Financial Intelligence (Transaction Reporting) Regulations, 2001 (Reg. 6 (2) – Training procedures
- **FITRR** – Financial Intelligence (Transaction Reporting) Regulations, 2001 (Reg. 5 (a) and (e) – Internal Reporting procedures
- **FCSPA** – Financial and Corporate Service Providers Act, 2000 (Section 14 (2) - Obligation of a licensee to clients
- **IBCARO** – International Business Companies (Accounting Records) Order, 2016 (Paragraph 2) - Declaration of availability of accounting records to be kept at registered agent
- **FCSPA** – Financial and Corporate Service Providers Act, 2000 (Section 8) - Display of license
- **IBCAA** – International Business Companies (Amendment) Act 2011 - Maintenance of Accounting Records



FCSP RISK RATING

- Risk rating of FCSPs
- Frequency for submission of routine examinations

Overall Risk Rating	Frequency to Submit Onsite Examination	Next Examination Period	Due Date
High	Annual	2017	June 2018
Medium	Every 3 Years	2019	June 2020
Low	Every 5 Years	2021	June 2022
Not Rated	Annual	2017	June 2018



FCSP EXAMINATION

- FCSP's are required to contact an Authorized Agent to conduct the routine examination of the Licensee.
- The FCSP exam is completed and submitted online.
- The Inspector evaluates the results and assigns a risk rating to the FCSP.
- The Inspector issues a non-deficiency or deficiency report with a risk rating to the FCSP.
- FCSP's have 30 days to respond to the deficiencies noted in the report.



Listing of Approved Auditors of FCSP's for 2018

The Securities Commission of The Bahamas, as the Inspector of Financial and Corporate Services, has approved the following accounting firms/accountants listed below to act as its agents in conducting the annual routine onsite examination for 2018.

Accounting Firms/Accountants	
Accord Services	K E Ferguson & Co.
AGM Partners	KPMG
Baker Tilly Gomez	Nexia Cochiamogulos
Basil Ingraham & Co.	Noronha & Co.
BDO	Paul Frazier, Jr.
Cates & Co.	Rhonda Cox
Crowe Horwath Bahamas	Ronald Atkinson & Co.
David P. Hamilton	Rankin, Elias and McDonald
Deirdre Donathan - Pinder	Sean Bain
Deloitte & Touche	SMS Chartered Accountants
FT Consultants Ltd.	S. R. Chea & Co
HLB Galanis & Co.	UHY Bain & Associates

THE INSPECTOR OF FINANCIAL AND CORPORATE SERVICES

The Securities Commission of The Bahamas
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HOW TO IDENTIFY THE ULTIMATE BENEFICIAL OWNER

- Know Your Customer
- KYC – Natural Persons
- KYC – Legal Persons
- KYC – Investment Condominiums
- Record Retention
- Source of Funds



Presenter: Mr. Wilfred Bain
Legal Officer, Enforcement Department



KNOW YOUR CUSTOMER “KYC”



Property of the Inspector of Financial and Corporate Services



WHAT IS “KYC”?

....also referred to as customer due diligence, is designed to ensure that reasonable steps are taken to satisfy the firm that the client is who he claims to be and that his funds are derived from a legitimate source or are not intended to be used for terrorism

- AML & AFT Handbook
and Code of Practice



ULTIMATE BENEFICIAL OWNER

Refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

- FATF, 2003



KYC - OBLIGATIONS

- The Financial Transactions Reporting Act, 2000
- The Financial Transactions Reporting Regulations, 2000
- The Financial Intelligence Unit Act
- Proceeds of Crime Act, 2000
- Anti-Money Laundering & Anti-Terrorism Financing Handbook & Code of Practice for Financial and Corporate Service Providers



KYC - OBLIGATIONS

- Securities Industry (Anti Money Laundering and Countering the Financing of Terrorism) Rules, 2015
- Investment Condominium Act, 2014
- Financial Transactions Reporting Bill, 2017



CONDUCTING KYC ON 'NATURAL' PERSONS



KYC - NATURAL PERSONS

- Full and correct name;
- Proof of permanent address;
- Date and place of birth;
- Purpose of account and nature of business relationship;
- Potential activity;
- Written confirmation that the customer is the beneficial owner; where the customer is an intermediary or nominee, identification and KYC of the UBO is required separately;



KYC - NATURAL PERSONS CONT'D

- Passport, driver's license, voter's card or other identification with photo which establishes identity
- Signature
- Telephone and fax number
- Source of Funds
- Other documentary evidence or otherwise which reasonably establishes identity
- For non-resident clients - Social security number, social insurance or national insurance number



CONDUCTING KYC ON 'LEGAL' PERSONS



WHO ARE LEGAL PERSONS?

- Companies (regular companies and international business companies (“IBC”))
- Trusts
- Foundations
- Partnerships



KYC - COMPANIES

- Certified copy of certificate of incorporation
- Resolution of the Board of Director authorizing the opening of the account and conferring authority on the person who will operate the account
- Certified copy of the memorandum and articles of association
- Names and addresses of all directors and officers
- Names and addresses of the beneficial owner(s)



KYC – COMPANIES CONT'D

- Purpose of business activity and parameters
- Confirmation that the corporate entity has not been struck off the register or in the process of being wound up
- Written confirmation that the client corporate entity is the beneficial owner. Where the client entity is an intermediary, KYC on beneficial owner is to be provided separately along with declaration of trust



KYC - CORPORATE DIRECTORS / SHAREHOLDERS

- Certified copy of certificate of incorporation;
- Certified copy of memorandum and articles of Association;
- Address of Registered Office;
- Register of Directors, Officers, Shareholders;
- Evidence of License/Registration with regulatory body
- Identification of each director and shareholder;
- Passport & address of each director and shareholder



KYC - TRUSTS

- Certified copy of trust deed
- Certified extracts covering the appointment and powers of the trustees from/or the original trust deed, and any subsidiary deed evidencing the appointment of current trustees
- Disclosure of trustee, settlor and any other person having power to appoint or remove trustees or fund managers



KYC – TRUSTS CONT'D

- KYC for trustees, settlors, asset contributors and beneficiaries
- Confirmation of trust capacity by potential client
- Where potential client seeks to undertake transaction as professional adviser, business or company acting as trustee or nominee in relation to a third party, the FCSP must verify the identity of the trustee, nominee or fiduciary and the nature of their trustee or nominee capacity or duties along with declaration of trust



KYC – TRUSTS CONT'D

- **Source of funds**
- **Nature of transactions**



KYC - FOUNDATIONS

- The foundation's charter
- Certificate of registration (or equivalent if from a foreign jurisdiction)
- Source of funds and verification of identity of any person other than founder who provides funds to the foundation
- Full KYC for founder(s) and for any officers and council members who may be signatories for the foundation's accounts
- Full KYC on beneficiaries who hold vested interest



KYC - PARTNERSHIPS

- Verification of all partners or beneficial owners
- Certified copy of partnership agreement (if any) or other agreement establishing the unincorporated business
- Mandate from the partnership or beneficial owner authorizing the opening of the facility and conferring authority on those who will operate the facility on behalf of the partnership or unincorporated business
- Documentary evidence in respect of partnership or beneficial owner(s)



KYC – PARTNERSHIPS CONT'D

- Written confirmation that the client entity is the beneficial owner. Where the client entity is an intermediary, KYC on beneficial owner is to be provided separately along with declaration of trust
- Purpose and intended nature of the business relationship



INVESTMENT CONDOMINIUM



KYC – INVESTMENT CONDOMINIUMS

- Certificate of Establishment
- Certificate of Conversion (if applicable)
- Governing Regulations (and any amendments)
- Register of participant interests (“participation interest registers”)
- KYC on persons holding participation interest in Investment Condominium
- Accounting records



RECORD RETENTION



RETENTION OF RECORDS

- KYC records are to be retained for no less than 5 years (Sect 24, FTRA, 2000); and
- Must be kept by any financial institution 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 (Sect. 26, FTRA, 2000).



SOURCE OF FUNDS



SOURCE OF FUNDS

INDIVIDUAL

- Pay slip/job letter (Salary)
- Employment contract
- Statement from Bank or Savings Institution (Savings/Bank Loan)



SOURCE OF FUNDS

SELF EMPLOYED

- Business license
- Financial reference
- Financial statements (most recent)
- Bank statement for company's account
- Licenses/approvals from any other regulatory agency(s)/licensing bodies



SOURCE OF FUNDS CORPORATE ENTITIES

- **Business license**
- **Bank statements**
- **Financial statements**
- **Tax returns**



THANK YOU



QUESTIONS & ANSWERS





CONTACT INFORMATION

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