



INDUSTRY UPDATE

Financial and Corporate Service Providers Act, 2020 – Money Lenders Rules, 2022

VIRTUAL PRESENTATION
24 February 2022
10:00 a.m.



INDUSTRY UPDATE

Financial and Corporate Service Providers Act, 2020

OVERVIEW & DEVELOPMENTS

Presenter:

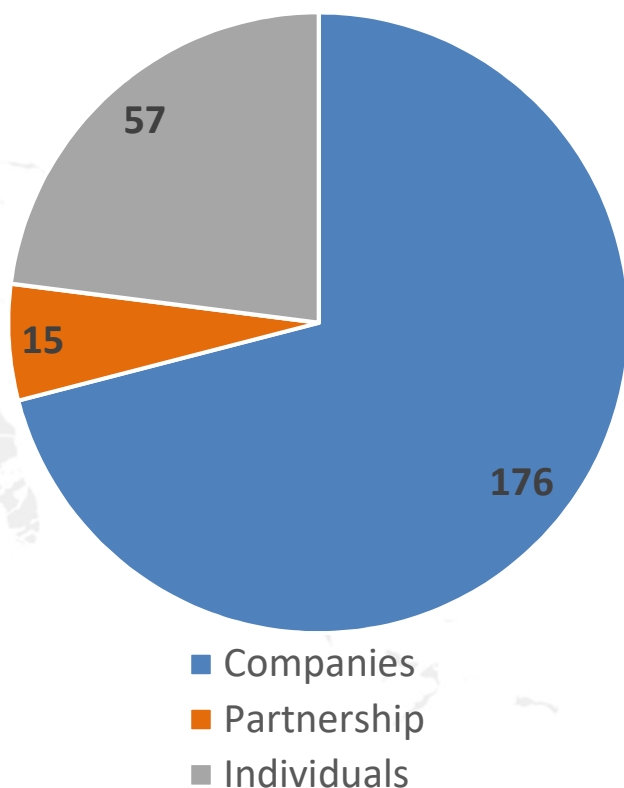
Christina Rolle

Executive Director

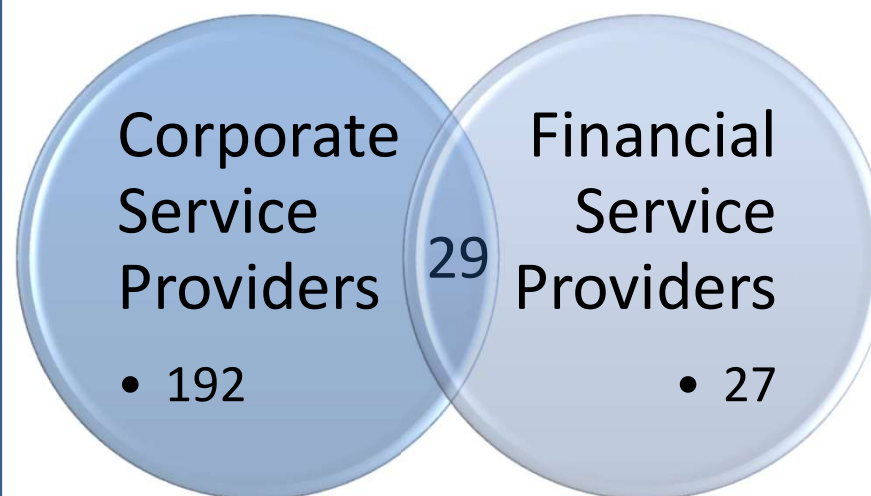
FCSPA: Statistics as at 31 January 2022

Total number of Licensees: 248

Licensees by Structure Type



Licensees by Activity



Number of IBCs attached to a licensed FCSP:

21,881

Number of IBCs attached to unlicensed agent:

2,526



Financial and Corporate Service Providers Act, 2020

Features

- “Inspector” removed
- More robust legislative framework
- Defined clear and distinct categories of licensable financial and corporate service activities
- Oriented to risk-based approach to supervision
- Sets the framework to apply appropriate conduct standards through Rules
- Establishes capital, financial and reporting obligations which can be defined per activity through Rules
- Criminalizes fraudulent financial schemes
- FCSP (Money Lenders) Rules, 2022 Out for Public Consultation

Current Legislative Framework

- Financial and Corporate Service Providers Act, 2020
- Financial and Corporate Service Providers (General) Regulations, 2020

Rules Issued to Date:

- Financial and Corporate Service Providers (Fees) Rules, 2020
- Financial and Corporate Service Providers (Anti-Money Laundering and Countering the Financing of Terrorism)(Amendment) Rules, 2020
- Financial and Corporate Service Providers (Anti-Money Laundering and Countering the Financing of Terrorism) Rules, 2019

AML/CFT-Specific Legislative/Regulatory Suite applies to the FCSPA:

- Financial Transactions Reporting Act, 2018
- Financial Transactions Reporting Regulations, 2018
- Anti-Terrorism Act, 2018
- Proceeds of Crime Act, 2018
- Financial Intelligence (Transaction Reporting) Regulations, 2001
- Policy on the assessment of AML/CFT infractions

Overview: Financial And Corporate Service Providers Act, 2020

Corporate Services

- **IBCs:** Formation; Registration; Management; Registered Office; Registered Agent; acts/arranges for another person to act as director, secretary, officer
- **ELPs:** Registered Agent; Registered Office; acts/arranges to act as director, secretary, or officer;
- **Bahamian Incorporated/Registered Entity:** Registered Agent; Registered Office; acts or arranges for another person to act as director, secretary, officer or shareholder
- **Executive Entities:** Agent
- **Foundation:** Agent
- **Purpose Trust:** Trustee
- **Private Trust Company:** Registered Representative
- **ICON:** Governing Administrator
- **Segregated Accounts Company:** Representative
- **Outsourced Compliance Services:** CO; MLRO

Overview: Financial And Corporate Service Providers Act, 2020

Financial Services/Non-Bank Financial Services

- Money Lending
- Money Broking
- Payday and Cash Advances
- Credit Extension
- Bill Paying Services
- Debt Collection
- Financial Advisory or Consultancy
- Financial Intermediation Services
- Trading in Commodities and other Financial Instruments
- Custody of Digital Assets
- Wallet Service Providers

Transition Update (2000 to 2020 Legislation)

- Transition ended 14 June 2021
- SCB's FCSPA, 2000 licensees mapped and grandfathered to FCSPA, 2020
- 347 licensees pre-transition, 248 at 31 January 2022)
- Old certificates were returned and new certificates issued
- Exercise to address licensees in Grand Bahama and Abaco over the coming months
- Strengthened relationship with the Registry –
 - persons seeking registration as agents must be licensed with the Commission, those that fail to regularise their registration will be subject to penalties and/or sanctions and any companies for which they act as RA/RO will effectively be without agents;
 - Continue to confirm and track IBCs under administration
- Strengthened relationship with the Financial Intelligence Unit –
 - Compliance Officers/MLROs must be registered

FCSPA, 2020: Impact on Central Bank of The Bahamas Licensees

Rationale:

- Align regulatory framework for corporate services with International Best Practices
- Provide a single regulatory framework for corporate services
- Eliminate regulatory gaps

Effect:

- FCSPA, 2020 excluded the previous exemption provided to banks and trust companies. Bank and Trust Companies must be licensed under FCSPA, 2020 to provide corporate services. This includes Registered Agent/Registered Office (RA/RO) services
- A “nominee trust license” issued by the Central Bank is not required for persons providing registered agent/registered office or other corporate services
- A subsidiary of a licensed FCSP providing corporate services (including nominee services) solely for its parent company does not require a separate license
- Must submit to SCB’s supervision with respect to provision of corporate services
- *Grandfathered in 26 registrants of the Central Bank of The Bahamas to date*

FCSP Rules – Priority for Development

- 1) Money Lenders Rules (Currently out for final public consultation)
- 2) Financial and Corporate Service Providers Rules
- 3) Debt Collectors Rules
- 4) Credit Extension Rules
- 5) Trading in Commodities and other Financial Instruments Rules
- 6) Custody of Digital Assets Rules
- 7) Wallet Services Rules
- 8) Intermediary Rules
- 9) Bill Paying Rules
- 10) Financial Advisory and Consultancy Services Rules*

** SCB did not anticipate this should capture audit firms. Contemplating removing this. Also, SCB is not seeing the use cases initially intended.*

Policy Concerns Driving ML Rules Development

- Consumer Protection: As non-bank lending grows, there is a strong need to protect consumers against predatory practices by creating standards and rules for the conduct of non-bank lenders
- SCB received complaints/allegations of harassment, actions bordering on criminal in the space

Rules issued for final round of public consultation:
2 February – 15 March 2022



For Public Consultation:

FINANCIAL AND CORPORATE SERVICE PROVIDERS (MONEY LENDERS) RULES, 2022

The Securities Commission of The Bahamas (the Commission), has issued the Financial and Corporate Service Providers (Money Lenders) Rules, 2022 (the Rules) for public consultation. The Rules may be found on the Commission's website at: www.scb.gov.bs/consultation.html.

An earlier draft of the Rules was previously issued for public consultation in 2017, which was based on the then existing Financial and Corporate Services Act Ch. 369. Since the initial round of consultation, the Financial and Corporate Services Act, 2020 was promulgated. In the circumstances, the Commission has updated the draft Rules to take account of comments received since the initial consultation, relevant provisions of the 2020 legislation as well as other developments. The attached revised version of the Rules is therefore being issued for a second round of consultation.

Summary

The Financial and Corporate Service Providers (Money Lenders) Rules, 2022 will establish a supervisory framework for non-bank money lenders. The key features of these Rules are:

- A money lender's license will only be granted to persons who are duly incorporated or organized under the provisions of the *Companies Act Ch. 308*, *International Business Companies Act Ch. 309*, or *Partnership Act Ch. 310*;
- To obtain a license a money lender must satisfy the Commission of their funding capital and other financial obligations. The Rules specifically identify the sources, methods of funding, and financing which can be used for money lenders' operations;
- Conduct standards are established to guarantee fair treatment of clients, responsible lending, and to ensure that representatives are fit and proper;
- Money lenders will be required to make the usual financial reports to the Commission (i.e. interim financial statements and audited financial statements);
- Requirements for mandatory terms to be included in money lenders' agreements (i.e. date, amount of principal loan, term of loan, etc.) In addition, specific consumer protection provisions are included in the rules to prohibit the inclusion of any term that: 1) Provide for penalties for early repayment; and 2) Limits any duty or liability of the lender to the borrower; and
- Contracts for the lending and repayment of money are not enforceable where the loan is made by an unlicensed money lender.**

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<https://www.scb.gov.bs/legislative-framework/consultation-documents/>

The Proposed Framework

Who is a money lender?

A person who, whether as principal or agent,

- carries on the business of money lending, or
- purchases loans (whether or not such person's primary business involves any other type of business activities).

A person is presumed to be a money lender if:

- lending money or purchasing loans in consideration of a larger sum being repaid by the borrower; or
- advertising as or announcing in any way that the person is a money lender.

What it means to be “In the Business of Money Lending”

A person carries on the business of money lending where, in the regular course of business or commercial activity that person lends money or purchases loans for the principle purpose of making a profit.

The Proposed Framework

Who is not a money lender for the purpose of the Rules

A person does not carry on the business of money lending where that person lends money or purchases loans as a one-off or occasional private transaction

Rules do not apply to:

- a person licensed by the Central Bank of The Bahamas under the Bank and Trust Regulation Act
- an insurance company licensed under the Insurance Act
- a co-operative credit union registered under The Bahamas Co-operative Credit Unions Act
- pawnbrokers or secondhand dealers licensed under the Pawnbrokers and Secondhand Dealers
- Loans from family, friends or related parties that are extended because of existing relationship and not because the lender is in the “business” of lending
- Interest-free, no fees loans/advances

Regularization of Existing Money Lenders

- Money lender must be structured as a legal entity.
“No person shall carry on any money lending activities in or from The Bahamas, or purport to do so, unless that person is –
(a) a person incorporated under the Companies Act, (Ch.308);
(b) a person incorporated under the International Business Companies Act, (Ch. 309) or
(c) organized under the Partnership Act (Ch. 310).” (Rule 25)
- Will eventually be required to provide financial reporting to the Commission
- Persons not licensed to carry on money lender business at the commencement of the Rules have 90-days from their commencement to apply to the Commission be licensed as a money lender.



INDUSTRY UPDATE

Financial and Corporate Service Providers Act, 2020

EXAMINATION UPDATES

Presenter:

Lesley Pearson

Senior Manager, Risk Analytics & Examinations

Legislative Updates

- Financial and Corporate Services Providers Act, 2020
 - Financial and Corporate Services Providers (General) Regulations, 2020
 - Financial and Corporate Services Providers Act (Anti-Money Laundering and Countering the Financing of Terrorism), Rules, 2019
 - Financial and Corporate Service Providers (Money Lenders) Draft Rules, 2022
- Ensuring that the organization has an approved Compliance Officer (CO) and MLRO
 - Implementing a Risk Management framework and a risk-based approach to monitoring facilities
 - Ensuring annual AML training
 - Ensuring the Licensee has implemented and maintained adequate Indemnity Insurance
 - Ensuring data protection measures are implemented

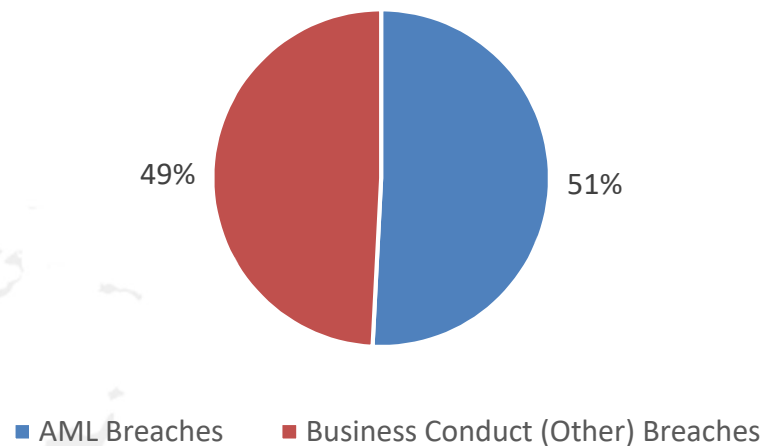


Penalties are now being enforced at \$100/day up to 60 days with possible further enforcement action.

Financial & Corporate Service Providers Act Examinations and Breaches

Year	No. of Examinations Completed	No. of Deficiency Letters	AML/CFT Breaches	Business Conduct Breaches	Total Breaches
2020	1	1	4	2	6
2021	15	14	27	28	55
Totals	16	15	31	30	61

Breaches 2020 & 2021



These include the following Common Business Conduct Breaches:

- Failure to notify the commission upon changes relating to registration
- Failure to ensure that the Annual Update and Declaration Form as set out in , Schedule 5, is filed within the prescribed time frame of 31st January each year, and fees are also paid to the Commission within the prescribed time frame
- Failure to keep at its registered office, a declaration for all of its IBC files stating that the company is keeping reliable accounting records and the declarations are stamped by the registrar within the prescribed timeframe
- Failure to provide proof of indemnity insurance
- Failure to obtain approval for certain changes

These include the following AML/CFT Common Breaches:

- Failure to appoint MLRO/ CO and ensure that the relevant individuals are approved by SCB and other relevant authorities (i.e. MLRO being registered with the Financial Intelligence Unit (FIU))
- Failure to implement risk rating framework and a Risk rating to each client
- Failure to Implement United Nations Security Council Resolutions, (IOEAMA) Orders
- Failure provide evidence that the client files were monitored on an ongoing basis and to ensure that the conduct of the relationship was consistent with the nature of the business stated when the relationship was established
- Failure to determine and report STRs to the relevant authority
- Failure to implement procedures regarding PEPs



INDUSTRY UPDATE

Financial and Corporate Service Providers Act, 2020

FINANCIAL SCHEMES

Presenter:

Gawaine Ward

Senior Manager, Enforcement Department

The Financial and Corporate Service Providers Act, 2020 (FCSPA) came into effect on 14 December 2020.

Included were provisions to address long-standing issues with fraudulent programs or schemes. The FCSPA now criminalises fraudulent programs or schemes, defined as “financial schemes”.

This segment will cover:

- Brief review of impetus behind the provisions;
- “financial scheme” as defined;
- Who may be held Liable; and
- The Penalties.

Pyramid Schemes - a form of fraud where the expected benefit to members depends primarily on the number of individuals they recruit, which is not necessarily the case in a Ponzi scheme.

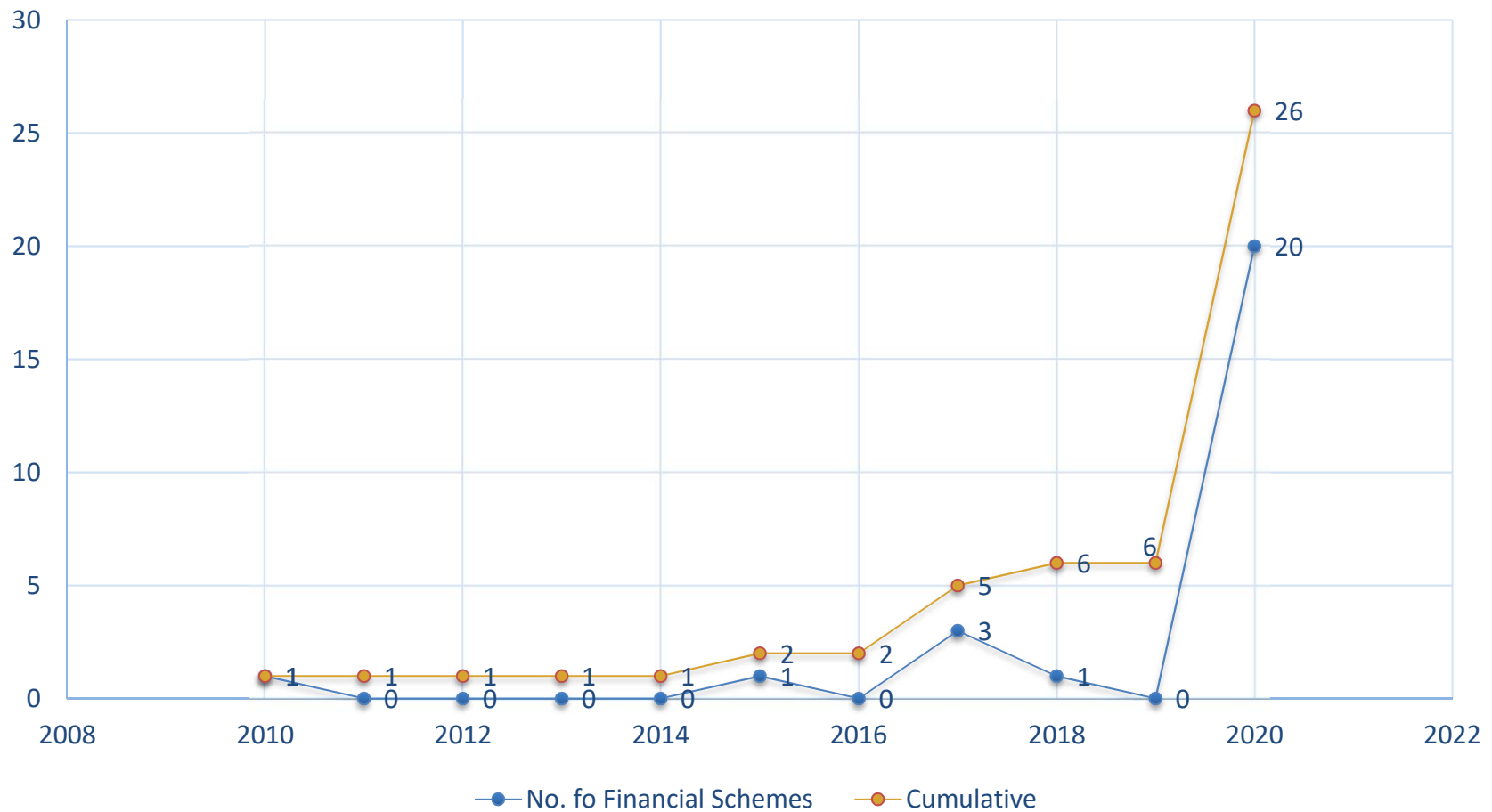
Ponzi Schemes - often grow larger than pyramid schemes as they can take in unlimited amounts from a single individual and can continue to operate indefinitely, as long as payments demanded by investors from the scheme do not exceed payments by investors into the scheme.

Market Manipulation - the pump-and-dump is the most famous of these, and the growing popularity of cryptocurrencies and reliance on social media for news is feeding them.

Advance Fee Fraud - some rich hapless person you don't know sends you an email asking your help with some emergency funds, after which the person will send you millions in return.

Multi-Level Marketing (MLM) schemes - a pyramid scheme may attempt to masquerade as a MLM arrangement, **which is a legitimate business activity in many jurisdictions**. MLM members are salesmen who sell a legitimate product but also receive commissions by their recruits sales, their recruits' recruits, and so on.

Financial Schemes Investigated in The Bahamas: 2010-2020



"financial schemes" includes any scheme in which –

- (a) a business is structured in such a way that the returns an investor or client earns is directly tied to the number of persons they recruit to join the scheme;
- (b) the amount or size of the income anyone person earns while participating in the scheme depends on the persons rank in the scheme, which rank is related to when the person joins the scheme;
- (c) the amount or size of the income anyone person earns while participating in the scheme is directly tied to or depends on the person's success in recruiting other persons to join the scheme;
- (d) Persons are required to first purchase a financial product or financial training offered by the scheme before they can participate in and earn income from the scheme, and neither the product nor training can be offered for resale to the general public;

"financial schemes" (cont'd)

- (e) persons are required to pay an advance fee, either as a lump sum or by instalments, in order to receive a larger financial return which is solely based on the number of persons recruited to the scheme;
- (f) persons are offered an opportunity to work remotely for compensation but participation depends on the payment of a fee or purchase of financial training products or material;
- (g) persons are promised or paid a commission if they facilitate the transfer of funds to a third party utilizing their bank account;

"financial schemes" (cont'd)

- (h) part of the marketing or promotion of the scheme involves assertions or statements guaranteeing or promising that participation in the scheme will result in returns which far exceed the returns offered in the investment market;
- (i) any aggregate public scheme that requires contributions to a pool of investment, and guarantees or promises a larger pay-out based on the number of persons recruited; **or**
- (j) any other arrangement or scheme which may be prescribed by the Commission in rules.

The Act ensures the ability to implement its provisions:

PART V (ss. 30 – 33):

Entry, Inspection and Investigation.

Empowers the Commission to investigate and obtain, or cause the production of, documents or material relevant to a **financial scheme**.

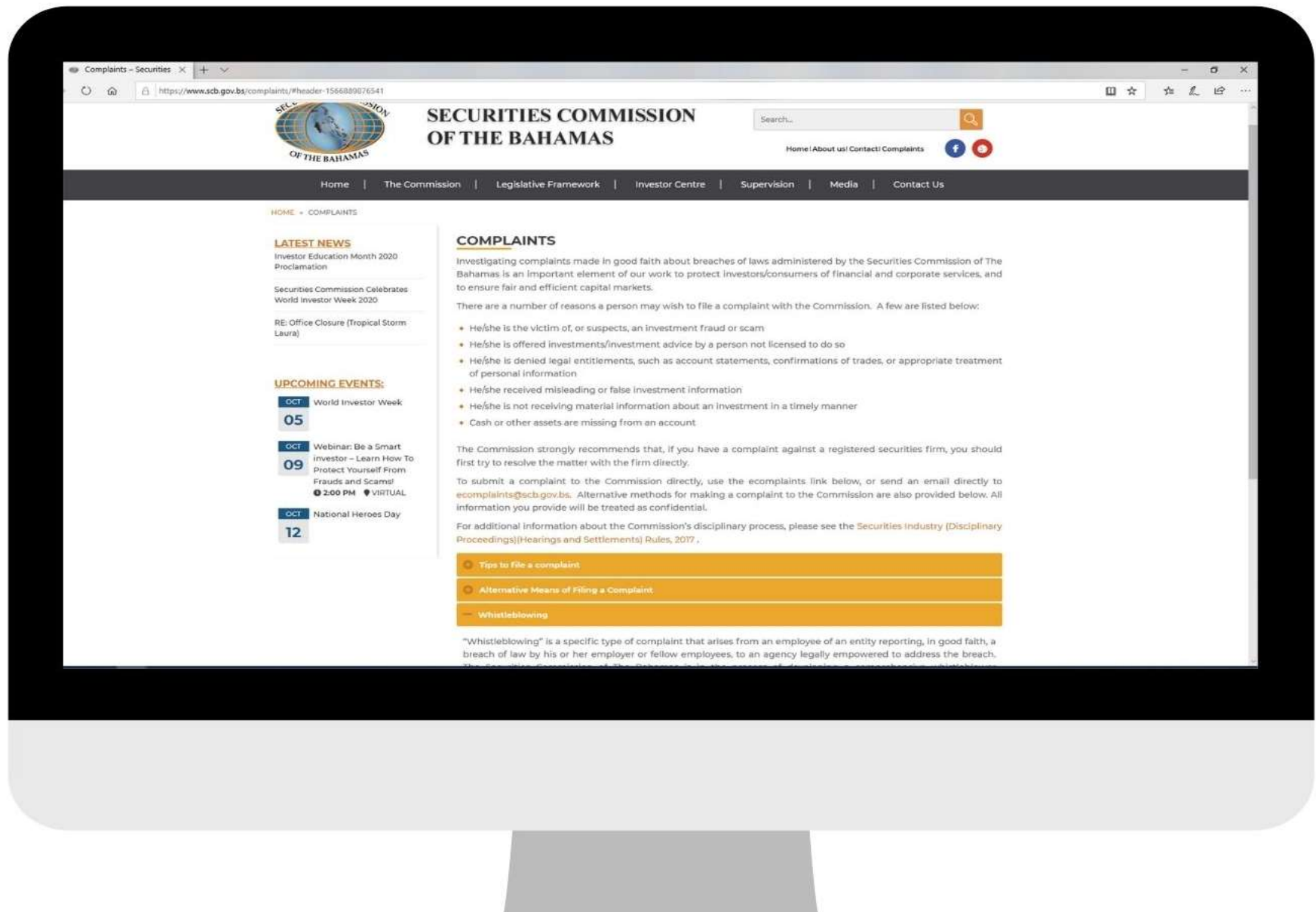


Section 46(2) FCSPA 2020: Offence

(2) Any person who –

- (a) launches or establishes, promotes, markets or advertises any financial scheme;
or
- (b) invites or recruits any other person to join or participate in any financial scheme,

commits an offence (and) is liable on summary conviction to a fine not exceeding one hundred thousand dollars.





INDUSTRY UPDATE

Financial and Corporate Service Providers Act, 2020

MONEY LENDERS RULES

Presenter:

Mechelle Martinborough

**Senior Legal Counsel, Office of Legal
Counsel**

Introduction

- Summary of the Financial and Corporate Service Providers (Money Lenders) Rules 2022
- Explain the interconnection between the Financial and Corporate Service Providers Act, 2020 and the Rules
- Discuss how the overarching objectives are achieved

Core Elements:

- Money lending activity to be conducted by legal entity;
- Money lenders to satisfy the Commission of its funding;
- Establishment of money lending conduct standards;
- Statutory reporting obligations;
- Consumer Protection Standards;
- Requirement of key terms to be within lending contracts;
- Enforceability of lending contracts;
- Establishes standards applicable to the purchase of mortgages;
- Prevention of money laundering and the financing of terrorism; and
- Offences.

A “Moneylender” carries on the business of money lending or purchases loans”

These rules **apply** to:

- persons carrying on the business of money lending; and
- contracts for the lending of money.

These rules **shall not apply** to:

- an agreement to repay money lent where there is NO payment of interest or fees by the borrower;
- persons deemed non-resident for exchange control purposes lending to borrowers not resident in The Bahamas;
- licensed pawnbrokers or secondhand dealers;
- a person licensed by the Central Bank of The Bahamas;
- a licensed insurance company; or
- a co-operative credit union.



- ✓ A person seeking to provide money lending services in The Bahamas, must submit an application for licensing, under the relevant provisions of the Financial and Corporate Service Providers Act, 2020.
- ✓ The Commission, will only accept applications for a money lenders' license, from persons duly incorporated under the *Companies Act (Ch.308)*, *The International Business Companies Act (Ch.309)*, or organized under the *Partnership Act (Ch.310)*.
- ✓ An applicant will, at the time of application for a money lenders licence; submit information concerning its lending capital and due diligence documents.



- ✓ Money lending activity restricted to the lending of money or the purchase of loans for the principle purpose of making a profit on a day to day basis.
- ✓ Carve out for persons licensed under other statutory provisions to provide lending/financial services.
- ✓ Money lenders and persons connected to the business of money lending shall be fit and proper.

A money lender must satisfy the Commission of its funding. The rules set out various financial methods which can be utilized by a lender for the financing or funding of its operations:

- Access to own capital including, savings, liquidation of assets, real property, or inheritance.
 - Issuance of promissory notes, debentures or bonds issued to investors.
 - Accessing overdrafts in its name with a licensee of the Central Bank of The Bahamas.
 - Taking on equity partners that were approved by the Commission.
- Entering into Bahamian-dollar loans with other persons, a licensee of the Central Bank, a person licensed by the Insurance Commission of The Bahamas, or another licensed money lender.



Fair Dealing

- Money lenders are prohibited from engaging in practices which are unfair, deceptive, or abusive when conducting lending business with customers.

Responsible Lending Policy

- Money lenders to implement written policies that set out the factors to be considered when assessing the financial standing of customers.

Responsible Lending

- Money lenders are to assess a customer's financial status before entering into a loan contract or varying the terms of an existing contract.

Loan Products Information

- Money lenders cannot enter loan contracts unless details related to the specific product were disclosed to customers before execution.

Interest and Fees

- Money lending agreements to only simple interest rates that do not exceed prescribed rates under the Rates of Interest Act (Ch. 341).

The rules impose the following statutory obligations on money lenders:

- Duty to keep loan and account records;
- Financial reporting;
- Duty to notify the Commission of any material changes to day to day operations;
- Duty to obtain written approval from the Commission prior to acquisition or merger with existing money lenders;
- Duty to cooperate with the Commission to provide information when required and to submit to onsite or offsite inspections.
- Duty to notify the Commission of any decision to go into voluntary liquidation, or not being in liquidation, to divest itself of all or a portion of its loan portfolio.

There are several aspects of the rules which ensure consumer protection. These include but are not limited to:

- Criminalization of threats and assaults on borrowers by money lenders or debt collectors engaged by a money lender;
- Money Lenders prevented from disposing of borrower's collateral except for in accordance with the provisions of the rules;
- Duty to ensure that employees of the money lender are duly qualified to offer services to consumers.



The following clauses must be present in all money lending contracts:

- Date of loan;
- Amount of principal loan;
- Interest charged on loan;
- Names of lender and borrower;
- Term of loan;
- Security (if any);
- Listing of all fees (administrative or otherwise);
- Stamp duty; and
- Any other matter considered relevant by the Commission.

A money lender's contract will not be enforceable where:

- Required terms are not contained in the contract;
- Contract not executed by the borrower, guarantor or co-signer;
- The contract provides for a penalty payable by the borrower for early payment;
- The contract contains a provision that excludes or restricts any duty or liability of the money lender owed to the borrower;
- The contract imposes interest rates which exceed the rates prescribed under the Rate of Interest Act;
- The money lender contract provides for an increase in the interest rate or the imposition of a fee by reason of any default in the payment of the sums due; or
- The money lender contract requires payment by the borrower of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of a loan which exceeds two and a half percent of the principal sums.



For the purposes of these rules a money lender will be seen as conducting mortgage lending and financing business in the following circumstances:

- i. with respect to a dwelling house, lends money to a borrower:
 - a. for the purchase of a vacant property for the construction of a dwelling house;
 - b. Purchase of a dwelling house; or
 - c. Purchases mortgages in default or loans in default where such loans were secured on a borrower's dwelling house.
- ii. lends money for the purchase of commercial property whether such property is developed or undeveloped.

In circumstances where a money lender purchases mortgages or loans in default the following standards will apply:

- the rate of interest applied to the mortgage or loan shall not be varied with the effect that it is higher than the interest rate existing under the former mortgage or loan terms;
- the borrower shall not be required to pay any fees, administrative or otherwise, or charges associated with or arising from the purchase of the mortgage or loan by the money lender; and
- where the money lender offers the borrower new payment terms, such terms shall not place the borrower in a worse position than the borrower would have been in had the loan not been sold.



REMINDER:

Money lender to comply with the provisions of the Financial Transactions Reporting Act, and all legislation relevant to the fight to prevent money laundering and the financing of terrorism.

The rules also stipulate that a breach of these rules by a money lender, its employees, or any person engaged by the money lender, shall be an offence punishable by a fine, imprisonment, or both.

Thank You!!

Questions & Answers



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