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FINANCIAL TRANSACTIONS REPORTING (AMENDMENT) ACT, 2022

Arrangement of Sections

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No. 11 of 2022

FINANCIAL TRANSACTIONS REPORTING (AMENDMENT) ACT, 2022

AN ACT TO AMEND THE FINANCIAL TRANSACTIONS REPORTING ACT

[Date of Assent – 20th May, 2022]

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which seeks to amend the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*), may be cited as the Financial Transactions Reporting (Amendment) Act, 2022.

2. Amendment of section 22 of the principal Act.

The principal Act is amended by the deletion of section 22 and the substitution of the following —

“22. Minister may prescribe measures to be imposed on any financial institution.

- (1) The Minister may by regulations, prescribe the type and extent of measures that any financial institution shall undertake, with respect to each of the requirements in this Part, subsequent to considering —
 - (a) the identified risks;
 - (b) the size of the business or profession; and
 - (c) the standards set by relevant professional bodies.
- (2) Every Financial Institution shall undertake measures for the purposes of making all employees aware of the —
 - (a) provisions of the Financial Intelligence Unit Act (*Ch. 367*), the Financial Transactions Reporting Act, 2018 (*No. 5 of*

2018), the Proceeds of Crime Act, 2018 (No. 4 of 2018), the Anti-Terrorism Act, 2018 (No. 27 of 2018), related regulations and any other statutory provision relating to money laundering, terrorism, terrorist financing, proliferation and proliferation financing; and

- (b) procedures maintained by the Financial Institution, in complying with the duties imposed under any Act or regulation specified in paragraph (a).
- (3) Every Financial Institution shall provide all relevant employees from time to time and in any case, at least once per year, with the appropriate training in the recognition and handling of transactions carried out, by or on behalf of, any person who is, or appears to be, engaged in money laundering, terrorism, terrorist financing, proliferation and proliferation financing.
- (4) The appropriate training specified in subsection (2), shall in addition, be given to all new employees as soon as practicable, after their appointment.
- (5) For the purposes of this section, an employee is a relevant employee, if at any time in the course of his duties, he has, or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering, terrorism, terrorist financing, proliferation and proliferation financing.”.

3. Amendment of section 32 of the principal Act.

Section 32 of the principal Act is amended in paragraph (a) of subsection (1), by the insertion, immediately after the words “provisions of this Act,” of the words “, any Regulations made hereunder or under any other law”.

4. Insertion of a new section 34A into the principal Act.

The principal Act is amended by the insertion, immediately after section 34, of the following new section 34A —

“34A. Failure to comply with an administrative penalty.

Where the Commission imposes an administrative sanction pursuant to section 57 —

- (a) the order shall be made in writing;
- (b) the order shall specify the breach committed by the Registrant and the sanction or administrative monetary penalty or both, imposed by the Commission;

- (c) a copy of the order shall be given to the Registrant; and
- (d) the order may be enforced in the same manner as an order of the court.”.

5. Amendment of section 35 of the principal Act.

Section 35 of the principal Act is amended —

- (a) by the deletion of subsection (3) and the substitution of the following —

“(3) The Commission may disclose to an overseas regulatory authority or domestic regulatory authority, information, documents or material it has acquired in the exercise of its functions 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 for the consolidated supervision, oversight or regulation of any Registrant of the Commission.”;

- (b) by the deletion of subsection (6) and the substitution of the following —

“(6) The Commission may provide assistance to an overseas regulatory authority where it is satisfied that —

- (a) the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality, or that such assistance may be relevant to the functions of the overseas regulatory authority and is intended to enable such authority to carry out the supervision, investigation or enforcement to which the request relates;
- (b) the overseas regulatory authority has given a written undertaking that any material obtained pursuant to its request shall not, except with the approval or consent of the Commission be —
 - (i) used for any purpose other than a purpose that is specified at the time of the request;
 - (ii) disclosed to any third party, other than a designated third party and must clearly specify, for what purpose and on whose behalf, the request is made;

- (iii) the material requested is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means; and
 - (iv) the provision of the requested assistance will not be contrary to the national interest of The Bahamas or the interest of the public;
- (c) 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 the authority; and
- (d) 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.”;
- (c) by the deletion of subsection (9) and the substitution of the following —
- “(9) In this section —
- “**designated third party**” includes —
- (a) a person or body responsible for supervising the relevant regulatory authority;
 - (b) any authority responsible for carrying out the supervision, investigation or enforcement of any law alleged to have been breached;
 - (c) any authority of the foreign jurisdiction, other than the requesting overseas regulatory authority, exercising a function that corresponds to a regulatory function of the Commission under this Act;
- “**domestic regulatory authority**” means the body or person in The Bahamas that exercises regulatory, supervisory, enforcement or similar functions as the Commission, and includes —
- (a) any regulator which supervises any financial institution and any designated non-financial business and profession, as defined in sections 3 and 4;
 - (b) any law enforcement agency; and
 - (c) any other governmental or regulatory agency or Competent Authority;

“enforce” means to enforce through any criminal, civil or administrative proceeding;

“material” means any document or information in any form; and

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

6. Amendment of section 37 of the principal Act.

Section 37 of the principal Act is amended —

- (a) in subsection (2) —
 - (i) by the deletion of the word “and” at the end of paragraph (a);
 - (ii) by the deletion of the period at the end of paragraph (b) and the substitution of the words “; and”;
 - (iii) by the insertion, immediately after paragraph (b), of the new paragraph (c) as follows —
 - “(c) an administrative monetary penalty.”;
- (b) by the insertion, immediately after subsection (2), of the following new subsection (3) —
 - “(3) Where the Commission makes an order under this section —
 - (a) the order shall be made in writing;
 - (b) the order shall specify the offence which the Registrant committed, and the penalty imposed by the Commission;
 - (c) a copy of the order shall be given to the Registrant;
 - (d) once the Registrant pays the fine as ordered, it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought, it shall be a good defence for the Registrant to prove that the offence with which it is charged, has been dealt with under this section;
 - (e) the order may be enforced in the same manner as an order of the court.”.

7. Amendment of section 57 of the principal Act.

Section 57 of the principal Act is amended in paragraphs (a) and (b) of subsection (1), by the insertion, immediately after the words “Proceeds of Crime Act, 2018”, of the words, “or any regulations made hereunder”.