



**ADMINISTRATIVE MONETARY PENALTIES FOR SUPERVISED FINANCIAL INSTITUTIONS
UNDER THE BAHAMAS' ANTI- MONEY-LAUNDERING AND COUNTERING THE FINANCING OF
TERRORISM REGIME**

Effective Date: 14 December 2018

The Central Bank of the Bahamas hereby notifies its supervised financial institutions of the Bank's adoption of an administrative monetary penalties (AMP) system, in accordance with provisions under the Financial Transactions Reporting Act, 2018 (hereinafter referred to as the "FTRA").

The framework takes effect on 14 December 2018, and applies for entities supervised pursuant to the Banks and Trust Companies Regulation Act, 2000 and the Bahamas Co-Operative Credit Unions Act, 2015.

Introduction

Pursuant to section 57 of the FTRA , the Central Bank as a Supervisory Authority¹, is empowered to impose AMPs against any SFI or person (employees, director or senior managers of an SFI), in respect of their contravention of provisions of inter alia, that Act . Administrative monetary penalties are monetary sanctions imposed by the Central Bank under statutory authority, without the Central Bank having to go to court.

Penalties are imposed primarily to promote high standards of regulatory conduct by deterring persons from committing contraventions under the FTRA and encouraging those who have committed contraventions to take appropriate remedial action. The imposition of penalties is also designed to prevent, or at least reduce recourse to more costly and time consuming enforcement action such as criminal prosecution.

Purpose

This guidance note sets out the procedures the Bank will generally follow when it has cause for concern regarding the operations of a SFI or in the event of non-compliance by any person or entity with the FTRA

¹ The FTRA defines Supervisory Authority as "the agency designated by law for ensuring compliance with the requirements of This Act, and any other anti-money laundering laws of The Bahamas, and includes the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Insurance Commission of the Bahamas, the Inspector of Financial and Corporate Services, the Gaming Board and the Compliance Commission."

or any other relevant AML/CFT laws. This Note also summarizes the circumstances under which the imposition of a penalty may be expected, and the monetary amount which may be applied.

Role of the Central Bank as Supervisory Authority

Compliance with Industry Laws

1. The Central Bank may become aware of non-compliance with the FTRA based on off-site or on-site examinations or by complaint. This information should be assessed and where appropriate further information sought by the Bank in order to determine the next steps.
2. Response to non-compliance should be prompt and a decision made as to whether the breach will be pursued. In addition to imposing AML AMPs, the Bank may impose a range of supervisory interventions.
3. This will ensure that responsible individuals and entities are aware of their obligations thereby helping them to come into compliance voluntarily.

Determining the Amount of the Penalty

4. The Bank will impose penalties on a case-by-case basis, informed by the particular circumstances of each case.
5. For violations made by a financial institution, the Bank may impose a maximum penalty up to \$200,000² and in the case of an individual, a penalty up to \$50,000.00³.
6. When determining the amount of a penalty that is appropriate and in proportion to the contravention under consideration, the Bank will take into account the factors outlined in paragraph 8 as well as reference made to the **annexed Schedule**⁴.

Factors that would be considered when determining the penalty to be imposed on a person

7. Below are the factors that the Central Bank will consider in determining the amount of a penalty. The list of factors are not exhaustive: not all of them may be relevant to a particular case, and there may be other factors not included that are relevant.
8. (a) The gravity and duration of the contravention or failure;
(b) The degree of responsibility of the person on whom the Bank proposes to impose the penalty;
(c) Deception
(d) Any previous contraventions or failures of the person (Repetition)
(e) The financial strength of the person;

² Section 57 (1) (i) of the Act

³ Section 57 (ii) (supra)

⁴ See Schedule

- (f) The amount of profit gained or loss avoided by the person;
- (g) The loss to third parties caused by the contravention or failure;
- (h) The level of cooperation of the person with the Bank
- (i) Any potential systemic consequences of the contravention or failure.⁵

Breaches will be classified in categories of *minor, serious or very serious*.

Issuance of Written Warnings

9. Where the Bank proposes to impose a penalty on a person for breach of the FTRA, the Bank will issue a written warning to the person specifying the following information⁶:
 - The nature of the contravention which the person is believed to have committed;
 - The amount of the penalty
 - A reasonable period, which may not be less than twenty-eight days from the date of the notice, within which the person to whom the warning is issued may make representations to the Bank.
10. The Bank may extend the period specified in the notice.

Final Decision

11. The Bank will consider any representation made by a person to whom a written warning is issued before making a final decision as to whether or not to impose a penalty on the financial institution and/or individual. The Bank will, within a reasonable timeframe, determine whether to impose an AMP and will provide written notice of its decision to the financial institution and/or individual.
12. The decision provided will⁷ :
 - Be in writing
 - Give the Central Bank's reason for the decision to take the action to which the notice relates;
 - Give an indication of –
 - (i) any right to have the matter appealed provided under any other law governing that financial institution; and
 - (ii) the procedure for appeal.
13. If the Bank decides not to take the action proposed in the warning issued, or the action referred to in its notice of decision, the Bank will give a notice of discontinuance to the person to whom the warning notice or decision notice was given.
14. The notice of discontinuance must identify the proceedings, which are being discontinued.⁸

⁵ Section 57(4)

⁶ See section 57 (5)

⁷ section 57 (8)

⁸ Section 57 (9)

Payment of Penalty

15. All penalties must be made payable to the Bank within the period specified by the Central Bank in its Notice. Penalties may be subject to the accrual of interest for late payment.

Publication

16. The Bank may make public a statement of the contravention or offence in respect of which it imposes a penalty. Publication will be made in respect of contraventions on the Central Bank's website and such publication would include, inter alia, the name of the person that committed the contravention, the nature of the contravention, and the amount of the penalty imposed.

No.	Description of Contravention	Act or Regulation	Classification (minor/serious/very serious)	BSD (\$) Amount (per violation)
FINANCIAL TRANSACTION REPORTING ACT, 2018				
1	Financial institution fails to carry out, document or update a risk assessment.	Section 5	Serious	Up to 50,000
2	Individual knowingly concurs in a financial institution's failure to carry out, document or update a risk assessment.	Section 5	Very serious	Up to 25,000
3	Financial institution fails to undertake the identification of a facility holder, or fulfil the identification or other requirements of the facility holder.	Sections 6(2) - 6(5)	Very serious	Up to 200,000
4	Individual knowingly concurs in a financial institution's failure to undertake the identification of a facility holder, or fulfil the identification or other requirements of the facility holder.	Sections 6(2) - 6(5)	Very serious	Up to 50,000
5	Financial institution enters into a correspondent relationship and fails to apply the prescribed identification, information collection, and evaluative measures.	Sections 6-11 and 16	Serious	Up to 25,000
6	Individual knowingly concurs in a financial institution's failure to apply the prescribed identification, information collection, and evaluative measures.	Sections 6-11 and 16	Very serious	Up to 50,000
7	Financial institution opens an anonymous account, or an account in a fictitious name for a facility holder.	Sections 6(2) - (5)	Very serious	Up to 200,000
8	Individual knowingly concurs in a financial institution's opening of an anonymous account, or an account in a fictitious name for a facility holder.	Sections 6(2) - (5)	Very serious	Up to 50,000
9	Financial institution fails to maintain books and records as required.	Section 16	Minor	Up to 15,000
10	Individual knowingly concurs in a financial institution's failure to maintain books and records as required.	Section 16	Serious	Up to 25,000
11	Financial institution fails to fulfil the requirements of sections 5 through 9 and 14, and either carries	Sections 5-9, 11(2) and 14	Very serious	Up to 200,000

	out a transaction, or intentionally opens an account or establishes a business relationship.			
12	Individual knowingly concurs in a financial institution's failure to fulfil the requirements of sections 5 through 9 and 14, and either carries out a transaction, or intentionally opens an account or establishes a business relationship.	Sections 5-9, 11(2) and 14	Very serious	Up to 50,000
13	Financial institution fails to fulfil the requirements of sections 5 through 9 and 14, and then fails to terminate a business relationship.	Sections 5-9, 11(2) and 14	Serious	Up to 25,000
14	Individual knowingly concurs in a financial institution's failure to fulfil the requirements of sections 5 through 9 and 14, and then fails to terminate a business relationship.	Sections 5-9, 11(2) and 14	Serious	Up to 25,000
15	Financial institution fails to conduct ongoing due diligence with respect to the accounts and transactions of facility holders.	Section 12	Serious	Up to 25,000
16	Individual knowingly concurs in a financial institution's failure to conduct ongoing due diligence with respect to the accounts and transactions of facility holders.	Section 12	Very serious	Up to 50,000
17	Financial institution fails to comply with obligations for enhanced due diligence.	Section 13	Very serious	Up to 200,000
18	Individual knowingly concurs in a financial institution's failure to comply with obligations for enhanced due diligence.	Section 13	Very serious	Up to 50,000
19	Financial institution fails to maintain internal control programs.	Sections 19-23	Serious	Up to 25,000
20	Individual knowingly concurs in a financial institution's failure to maintain internal control programs.	Sections 19-23	Very serious	Up to 50,000
21	Financial institution fails, without reasonable excuse, to retain or properly keep/destroy records.	Sections 15, 17 and 18	Serious	Up to 25,000
22	Individual knowingly concurs in a financial institution's failure to retain or properly keep/destroy records.	Sections 15, 17 and 18	Very serious	Up to 50,000
23	Financial institution establishes, operates, or deals with a shell bank.	Section 24(1)(a)	Very serious	Up to 200,000
24	Person establishes, operates, or deals with a shell bank.	Section 24(1)(a)	Very serious	Up to 50,000
25	Financial institution deals with a shell bank in another jurisdiction.	Section 24(1)(b)	Very serious	Up to 200,000

26	Person knowingly concurs in a financial institution's dealings with a shell bank in another jurisdiction.	Section 24(1)(b)	Very serious	Up to 50,000
27	Financial institution enters into, or continues, a correspondent relationship with a shell bank or respondent institution that permits its accounts to be used by a shell bank.	Section 24(1)(c)	Very serious	Up to 200,000
28	Person knowingly concurs in a financial institution's entering into, or continuation of a correspondent relationship with a shell bank or respondent institution that permits its accounts to be used by a shell bank.	Section 24(1)(c)	Very serious	Up to 50,000
29	Financial institution fails to submit a report to the Financial Intelligence Unit.	Sections 25-26	Very serious	Up to 200,000
30	Person knowingly concurs in a financial institution's failure to submit a report to the Financial Intelligence Unit.	Sections 25-26	Very serious	Up to 50,000
31	Financial institution fails to register with the Compliance Commission.	Section 33(1)	Serious	Up to 25,000
32	Individual knowingly concurs in a financial institution's failure to register with the Compliance Commission.	Section 33(1)	Serious	Up to 25,000
33	Financial institution fails to notify the Compliance Commission of changes in registered office, principal place of business, beneficial ownership, director, partner, compliance officer or money laundering reporting officer.	Section 33(3)	Minor	Up to 15,000
34	Individual knowingly concurs in a financial institution's failure to notify the Compliance Commission of changes in registered office, principal place of business, beneficial ownership, director, partner, compliance officer or money laundering reporting officer.	Section 33(3)	Serious	Up to 25,000
35	Financial institution fails, or refuses, to produce any record, or supply any information or explanation to the Compliance Commission.	Section 34	Serious	Up to 25,000
36	Individual knowingly concurs in a financial institution's failure or refusal, to produce any record, or	Section 34	Serious	Up to 25,000

	supply any information or explanation to the Compliance Commission.			
37	Financial institution fails to register with the Compliance Commission within the prescribed period.	Section 33(2)	Serious	Up to 25,000
38	Individual knowingly concurs in a financial institution's failure to register with the Compliance Commission within the prescribed period.	Section 33(2)	Very serious	Up to 50,000
39	Financial institution fails to designate a compliance officer at senior management level.	Section 20(1)	Serious	Up to 25,000
40	Individual knowingly concurs in a financial institution's failure to designate a compliance officer at senior management level.	Section 20(1)	Very serious	Up to 50,000

Note:

- Per section 57(1) of the FTRA, the maximum penalty is \$50,000 if the violation is committed by an employee, director or senior manager of a financial institution, and \$200,000 if the violation is committed by a company.
- Penalties for individuals and companies will be assessed on a case-by-case basis using the factors outlined in section 57(4), and any applicable guidance developed by the Bank.
- Minor violations: \$1-\$15,000 per violation
- Serious violations:\$1-\$25,000 per violation
- Very Serious violations: \$1-\$50,000 per violation for individuals and \$1-\$200,000 per violation for an entity.