



Know Your Customer Requirements for Banks and Trust Companies

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22nd August 2002

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1. The Role of The Central Bank of The Bahamas

1.1 The Central Bank of The Bahamas (“the Bank”) has statutory responsibility for supervising and regulating banks and trust companies in The Bahamas. The Bank’s interest primarily is to ensure that banks and trust companies licensed pursuant to the Banks and Trust Companies Regulation Act, 2000 (“BTCRA”) have due regard to and implement appropriate safety and soundness policies and procedures which tend toward the preservation of the banking system in The Bahamas.

1.2 Section 5 (1) (b) of the Central Bank of The Bahamas Act provides that one of the duties of the Bank is:

in collaboration with the financial institutions, to promote and maintain adequate banking services and high standards of conduct and management therein.

1.3 The Banks and Trust Companies Regulation Act 2000 (BTCRA) goes on to specifically address the role of the Central Bank as the Supervisory and Regulatory authority for banks and trust companies (licensees) licensed in The Bahamas.

1.4 In particular, the BTCRA establishes the Office of Inspector of Banks and Trust Companies and sets out the duties of the Inspector and the general criteria to be used for supervising licensees. See section 9 and 13 and Schedule 1 of the BTCRA.

1.5 Two of the duties of the Inspector in connection with monitoring KYC standards and policies of licensees are:

(i) to conduct “on-site” examinations and off-site supervision of the business of licensees for the purpose of satisfying himself that the provisions of the BTCRA or the Financial Transactions Reporting Act, 2000 are being complied with.

See section 9(2)(b) BTCRA;

(ii) to inspect and supervise banks and trust companies in accordance with the Rules for Inspection and Supervision

set out in the First Schedule. See section 9(f) and 13 BTCRA.

1.6 Section 13 of the BTCRA incorporates the approach of the Basel Committee to banking supervision:-

The Rules set out in the First Schedule shall be observed by the Inspector for the purpose of supervising banks and trust companies and

their operations so as to ensure the preservation of the soundness and efficiency of the banking system.

1.7 Those provisions of the First Schedule which relate to know your customer standards also reflect the recommendations and approach of the Basel Committee to banking supervision in this important area. Paragraphs 1(a) and 1(h) of the First Schedule provide as follows:

The Inspector shall:

- (b) establish appropriate and prudent standards for conducting safe and sound banking and trust business;**
.....
- (h) ensure that banks have in place internal controls adequate to the nature and scale of their operations, and adequate policies, practices and procedures, including strict know-your-customer rules that promote high ethical and professional standards, and so prevent the use of the bank for criminal purposes;**

1.8 In carrying out its functions, the Bank has regard to the recommendations of the Basel Committee insofar as they have been incorporated in the statutory regime relevant to banks and trust companies.

2. Basel Committee on Customer Due Diligence¹

2.1 The Basel Committee's guidance on Customer Due Diligence for Banks advocates generally, that adequate Know Your Customer (KYC) policies and procedures have particular relevance to the safety and soundness of banks in that they

- prevent reputation risk and preserve the integrity of the banking system by preventing the use of the bank for criminal purposes.
- complement the risk management strategy of banks (by enabling them to identify, limit and control risk exposure in assets and liabilities).

2.2 These procedures should be treated as a critical element in the effective management of banking risks. The Basel Committee approaches KYC due diligence issues from a wider prudential, not just anti-money laundering perspective.

2.3 Licensees may be exposed to unnecessary risks where there are inadequate KYC policies and procedures in place. These risks include reputation, operational, legal and concentration risks.

¹ This document may be obtained from the website of the Bank for International Settlements: www.bis.org

Reputation Risk

The risk to earnings or capital arising from the potential that negative publicity regarding an organization's business or ethical practices will cause a decline in the customer base, costly litigation or revenue reduction; such risk often arises from the mismanagement of other risks.

Operational Risk

The risk to earnings or capital arising from the potential that inadequate information systems, operational/transactional problems in service and product delivery, breaches in internal controls, fraud, failure to properly adjust to changes in the operating complexities of the markets, or unforeseen catastrophes will result in unexpected losses.

Legal Risk

The risk to earnings or capital arising from the potential that unenforceable contracts, lawsuits or adverse judgments may disrupt or otherwise negatively affect the operations or financial condition of the organization adversely affect the operations or condition of a bank.

Concentration Risk

Potential that a bank is over exposed to a single borrower or connected group of borrowers.

2.4 The Basle Committee postulates that a licensee's due diligence policies and procedures should address at least four (4) essential areas:

- (1) customer acceptance policy
- (2) customer identification
- (3) on-going monitoring of high risk accounts

Note: The existing statutory regime of The Bahamas requires financial institutions to monitor *all* accounts

- (4) risk management.

2.5 Under the Basel Committee’s Guidance “customer” includes:

- beneficial owners of accounts or facilities, that is, the person in whose name the account has been opened or the person on whose behalf the account is maintained.)
- beneficiaries of transactions conducted by professional intermediaries.
- any person or entity connected with a financial transaction that can pose a significant reputation or other risk to the bank.

3. Verification of Identity (VOI) – The Statutory Regime

3.1 The Central Bank of The Bahamas has regard to the overarching policy of the Banks and Trust Companies Regulation Act, 2000 and the requirements of the Financial Transactions Reporting Act, 2000 and other relevant legislation when assessing the know your customer (KYC) policies and procedures of licensees through its on-site examination process.

3.2 Licensees need to know:

- the identities of their customers
- the purpose and intended nature of the business relationship
- the expected activity and size of the account

to enable them to monitor their relationship with their customers, understand the customer’s on-going business and if necessary provide evidence in the event of disputes, legal action, or an investigation by the Financial Intelligence Unit, or the Police.

3.3 The Financial Transactions Reporting Act, 2000, (“the FTRA”) and the Financial Transactions Reporting Regulations, 2000² (“the FTRR”) require that due diligence be carried out on customers of financial institutions so that an institution knows the identity of each of its customers and has sufficient information about their customers to enable the institution to determine whether there are any unusual or suspicious activities going on in relation to a particular customer or account or transaction. Financial institutions are required to obtain documents and information which confirm a customer’s identity on an objective basis. Knowing your customer includes being aware of the nature of the transactions which a customer is likely to engage in throughout the business relationship.

Relevant Law

3.4 When establishing and implementing know your customer (KYC) policies and procedures, financial institutions, which are licensed and regulated by the Central Bank of The Bahamas, should have regard to the following legislation and guidelines:

² The Financial Transactions Reporting Regulations, 2000 may be found on the website of the Central Bank of The Bahamas at: www.centralbankbahamas.com.

- (1) Banks and Trust Companies Regulation Act, 2000
- (2) Financial Transactions Reporting Act, 2000
(Act No 40 of 2000)³
- (3) Financial Transactions Reporting Regulations 2000
(SI No 111 of 2000)⁴
- (4) Proceeds of Crime Act, 2000
- (5) Financial Intelligence Unit Act, 2000⁵
- (6) Financial Intelligence (Transactions Reporting) Regulations, 2001
- (7) Financial Intelligence Unit's Anti-money Laundering Guidelines for Banks and Trust Companies

Whose Identity Should be Verified?

3.5 Financial institutions are required by the FTRA to know who the beneficial owners of their facilities are. For the purposes of the FTRA, the identity of any person from any of the following groups must be verified or confirmed:

- Individuals
- Corporate entities whether incorporated in The Bahamas or elsewhere
- Partnerships
- Unincorporated Associations
- Unincorporated businesses

When Must Verification Occur?

3.6 The FTRA provides that customer identity must be verified in the following

³ As amended by the Financial Transactions Reporting (Amendment) Act, 2001 (Act No 17 of 2001)

⁴ As amended by the Financial Transactions Reporting (Amendment) Regulations (SI No 113 of 2001)

⁵ As amended by the Financial Intelligence Unit (Amendment) Act, 2001 (Act No 20 of 2001)

cases:

- (a) financial institutions are required to verify the identity of each and every existing facility holder. This exercise should be completed by 31st December 2002;
- (b) before a new account or facility is opened;
- (c) where there is doubt about the identity of an existing facility holder;
- (d) whenever the amount of cash involved in an occasional transaction exceeds \$10,000. The identity of the person who conducts the transaction should be verified before the transaction is conducted;
- (e) whenever the amount of cash involved in an occasional transaction exceeds \$10,000 and it appears to a licensee that the person conducting the transaction is doing so on behalf of any other person or persons. In these circumstances the identities of the third parties must be verified before the transaction is conducted;
- (f) whenever it appears that two or more (occasional) transactions are or have been deliberately structured to avoid lawful verification procedures in respect of the person(s) conducting the transaction(s) and the aggregate amount of cash involved in the transaction(s) exceed \$10,000. Verification should be conducted as soon as practicable after the licensee becomes aware of the foregoing circumstances;

The identity of third parties should be verified before transactions are conducted, or as soon as practicable after licensees become aware of the relevant circumstances.

Exemptions

3.7 The following entities are exempted from the general verification of identity requirements:

- Superannuation Schemes
- Discretionary Trusts
- Occupational Retirement/Pension Plans which allow non-employee participation
- Government Agencies
- Institutions exempted by Regulation 5A of the FTRR such as financial institutions regulated by the Central Bank of The Bahamas, the Securities Commission, the

Registrar of Insurance or the Gaming Board. (See paragraph 33 of the FIU's Guidelines)

Written Confirmation

3.8 Licensees may rely on the written confirmation of other financial institutions ("eligible introducers") that they have verified customer identity in those instances permitted by the FTRA. Eligible introducers are the financial institutions referred to by section 2(3) of the FTRA¹ and the foreign financial institutions² referred to in section 2(1) of the FTRA (as amended) which are located in Countries listed in the First Schedule to the FTRA³. Examples of when written confirmation may be relied upon by

Licensees are:

- (i) Where a licensee is unable to readily determine whether or not an occasional transaction involves cash because a customer deposited funds into a facility held by the licensee but provided by an eligible introducer.
- (ii) Where a financial institution which is an eligible introducer, conducts a transaction on behalf of a customer, using a facility of a licensee, the licensee may rely upon the written confirmation of the eligible introducer that it has verified the identity of the customer concerned (See section 8(6) and 9(6) FTRA).

Where such transactions are conducted through an eligible introducer's facility, in addition to obtaining written confirmation, a licensee must also confirm the existence of the facility provided by the eligible introducer. (Section 11(3) and 11(4) FTRA).

4. What Documentation Is Required?

4.1 The documentation which is required to verify customer identity is listed in the Financial Transactions Reporting Regulations, 2000 and the amendments thereto.

¹ Banks or trust companies, companies carrying on life assurance business, licensed casino operators, broker dealers and mutual fund administrators and operators.

² Foreign financial institutions are financial institutions which are situated in countries listed in the First Schedule of the FTRA and which exercise functions equivalent to the corresponding financial institution in The Bahamas referred to in section 2(3) of the FTRA.

³ See the Appendix.

4.2 Documentation Requirements for Specific Cases:

(i) Question

- **The apparent conflict between the generality of Section 11 of the FTRA and the specificity of the FTRR**
- **Dealing with long-term customers**

Response

Licensees must seek to obtain the documentation and information required by the FTRR when verifying the identity of new customers. The documentation listed in the FTRR is reasonably capable of establishing the identity of clients.

In the case of existing customers, customer records must be updated in accordance with the relevant provisions of the FTRR.

Pending amendments to the existing statutory regime, Licensees must comply with the requirements of the FTRR.

(ii) Question

Where the individual(s) are well known and there is information available on them (or their general family wealth) through journals, magazines, or internet searches should this not suffice within the general context of Section 11?

Response

Where individuals are well known and there is information available on them (or their general family wealth) through journals, magazines and internet searches etc., this information may be relied on as an independent source for *confirming* the identity of a customer. This information should be noted on the customer's file and regularly updated. Such information should not, however be used *in replacement of* the documentation required by the FTRR for verification of customer identity.

(iii) Question

Where the account is a very old account and there have been no new funds invested in the account since the account was established, you have dealt with the individual at a particular address or addresses for a number of years and you are generally

satisfied about the identity of the individual, should this not suffice within the generality of Section 11?

We would point out that even the UK which is generally recognized as one of the highest regulated jurisdictions has seemingly taken account of some of the said factors or at least the challenges of dealing with old accounts by grand-fathering all pre-1994 accounts.

Response

See the response to Question (i) above.

In relation to the position of the United Kingdom, the major banks in that jurisdiction have on a voluntary basis, announced that they will commence the process of verifying the identities of all existing customers, notwithstanding the previous grandfathering arrangements. The Financial Services Authority supports and welcomes this move.

(iv) Question

Source of Funds –What suffices as information/evidence of source of funds/wealth. Does a general statement about the employment/profession or business of the individual suffice? Does this question relate only to the funds being contributed to the account or to the overall wealth of the client?

Response

The degree and type of information which licensees should obtain as evidence of source of funds will depend on:

- The purpose for which the facility/account is to be used
- The category of customer (individual/corporate)
- The expected size and activity of the account.

The source of funds needs to be known so that a licensee can effectively monitor the conduct of an account for any unusual or suspicious activity.

Licensees may require:

Employed individuals to produce a letter confirming their employment, and giving a general salary range, where the account is to be funded by a person's salary or commission.

Self employed persons to produce evidence of their business activity such as a business licence, a financial and corporate service provider's licence, and financial references from banks which are licensed by the Central Bank of The Bahamas or First Schedule Country Banks⁴.

Corporate entities, to produce, in addition to the documents of incorporation, financial references, business licence, or financial and corporate service provider's licence.

Other documents include:

- Reliable public sources such as reputable financial journals
- Tax returns

Licensees should use their discretion to determine whether source of funds documentation should be limited to general statements about the employment/profession or business of a customer. The type and degree of information sought should reflect the seriousness of the risk posed to the institution by the customer in question and the nature of the business relationship.

For example, a bank would not need to see the detailed financial statements of a shipping magnate who operates in several jurisdictions through numerous companies – where he opens an account in The Bahamas for the sole purpose of buying and maintaining a winter home here and for funding his family's vacation time here.

Personal transactions should be distinguished from commercial transactions.

(v) Question

Deceased Beneficial Owners/Settlers/Asset Contributors – Is it necessary to seek to obtain additional Verification of Identity information/documentation or does a Certified Death Certificate on file obviate this need.

Response

If the personal representative of the deceased is opening an account to windup the deceased's estate, the identity of the personal representative must be verified pursuant to the provisions of the FTRR.

The following documentation should also be obtained:

- a. Letter of administration (original or duly certified copy)

⁴ Banks situated in countries listed in the First Schedule to the FTRA regulated by bodies having similar functions to the Central Bank of The Bahamas.

- b. Grant of Probate (original or duly certified copy)
- c. Death Certificate (original or duly certified copy)

Where the personal representative is simply distributing the assets of the estate, the licensee should obtain the documentation required by FTRR 3(1)

(a) – (h) **as well as** the Letters of Administration or Grant of Probate and the Death Certificate.

(vi) Question

Is it necessary to verify the identity of a Nominee Asset Contributor even though in some cases these nominees have no further dealings with the trust or even with the person for whom they have acted and it is difficult to even locate them. Is it necessary to obtain full VOI per the FTRR for such individuals particularly if you have obtained full VOI for the true asset contributor?

Response

If a licensee knows that the asset contributor to a trust is a nominee, the licensee is under an obligation to verify the identities of both the settlor **and** the nominee.

A licensee must make reasonable efforts to verify the identity of all nominee's or intermediaries. Where a licensee has been unable to locate the nominee to obtain this information, the licensee should seek to obtain a written statement *from the settlor* about the identity of the nominee.

Where the identity of a nominee asset contributor cannot be verified, or cannot be fully verified in accordance with the FTRR, a licensee should record in writing, the efforts made to verify the identity of the nominee and the outcome.

(vii) Question

Declarations of Trust – In such documents there is no named Settlor and such is often required for various estate planning reasons. Who then is the facility holder? Should VOI be obtained from the asset contributor? This obviously contradicts the intent and purpose of utilizing a Declaration in the first place.

Response

When dealing with trusts, licensees should seek to verify the identity of the true beneficial owner of funds deposited in a facility as well as the identity of named facility holders. The identities of the following parties should be verified:

- a. trustees

- b. settlors/grantors
- c. asset contributors
- d. beneficiaries (where possible)

The FIU's guidelines provide that the identity of the settlor and/or beneficial owner of trust funds, who provide the funds, and any controller or similar person having power to appoint or remove trustees or fund managers, should be verified. (See paragraphs 58 – 69 of the FIU's guidelines)

(viii) Question

Declaration of Beneficial Ownership – (1) If you have satisfied every other requirement of the FTRR with the exception of this Declaration, is it reasonable to insist on this one item? What value does it really add?

Response

Wherever possible, the declaration as to beneficial ownership set out in the FTRR should be obtained. This is really the affirmation of a customer that he is not operating and does not intend to operate an account on behalf of a third party.

(ix) Question

Where a company is managed by the Financial Institutions (i.e. the directors, officers and nominee shareholders are provided by the institution) does it make sense for the Directors of such a company to sign a Declaration?

Response

Where a licensee forms a company to facilitate its banking business so that the directors, officers and nominee shareholders of the company are provided by the licensee and the formation and operation of the company has been approved by the Central Bank of The Bahamas, the directors of the Company do not need to make a declaration. However the bank must verify the identity of the person or entity on whose behalf the nominee company is formed and that individual or company (i.e. the true beneficial owner of the assets in question) must provide a declaration.

(x) Question

The Declaration of Beneficial Ownership seems completely inapplicable/inappropriate in relation to trusts. It makes no sense for a Settlor to state that all credits are and will be beneficially owned by him because after the assets are settled into the trust they no longer belong to him/her. It likewise

seemingly makes no sense in relation to vested beneficiaries because the extent of their vested interests may be limited and it is therefore not accurate to say that all credits are and will be beneficially owned by them.

Response

Where the settlor is the beneficial owner of funds to be settled into a trust, he/she can make a declaration to the extent that he/she is the beneficial owner of the funds which are being credited to the account for the benefit of named beneficiaries. The settlor should provide the licensee with the names of the beneficiaries entitled to the funds (that is, beneficiaries who have vested interests in trust funds) and with the extent of their interest wherever this is known to the settlor. In any case, the true beneficial owner of the funds must be identified.

(xi) Question

Expired Passports and other documents – While it is accepted that in the course of updating records it is prudent to seek to obtain an updated photo identification. If the identification document was valid at the time that the account was opened is it reasonable to insist on a current document? Particularly since the Regulations do not specify that documents must be current?

Response

Documentary evidence obtained pursuant to the FTRR should, as far as reasonably practicable, be current. See paragraph 46 of the FIU Guidelines.

Licensees should note that there is no need ordinarily to ask for a customer's passport and drivers licence or other photo identification when carrying out its verification of identity. The Regulations do not require all the documents listed under regulation 3 (1) (g) to be obtained. There is no need to ask customers for more than one kind of photo identification unless special circumstances prevail.

(xii) Question

Certification of ID Documents e.g. passports – The Regulations do not require certified documents. However, the Guidance Notes as a matter of best practice do. While it is acknowledged particularly in relation to clients not met face to face that as a matter of best practice (which is the additional standard by which financial institutions are assessed by the Central Bank Inspectors) documents should be certified, is it necessary to go back and request a certified copy where you already have an uncertified copy on file.

Response

Although the regulations do not require certification of identification documents, this is best practice in well regulated jurisdictions. Where a licensee has seen an original document from which an uncertified copy was taken (by an employee of the licensee), there is no need to obtain a certified copy of the document. Customer files should reflect the fact that a licensee's employee has seen an original document. If an uncertified current copy of a passport or other document is already on file, (a copy provided by the customer) a certified copy need not be obtained if the licensee confirms the identity of the customer by reference to reliable independent means (e.g. cross-check with a reputable credit or financial institution in the customer's country of residence). See paragraphs 50 and 53 of the FIU's Guidelines.

(xii) Question

Do the words “readily accessible and convertible into written form in the English language” in section 26 of the FTRA mean that documents may be maintained in another language but be easily translated into English.

Response

The Financial Transactions Reporting Act, 2000 provides that relevant documents may be kept either in written form in the English language or so as to enable them to be readily accessible and readily convertible into written form in the English language. (See section 26 FTRA).

This means that where an original document is (originally) produced or published in a foreign language, a record of the document may be kept in the foreign language provided that an English version is readily available to the FIU in the case of investigations for suspicious transactions, and to the Central Bank examination team in the case of their prudential on-site examinations.

The Central Bank reserves the right to require its licensees to keep specified documents in written form in the English Language where this accords with sound banking practice. Licensees will be given opportunity to comment on any change of policy in this regard. form in the English Language where this accords with sound banking practice. Licensees will be given opportunity to comment on any change of policy in this regard.

(xiv) Question

Are character references or credit references required when establishing a new deposit or loan relationship with customers.

Response

This is a matter for the licensee's discretion.

(xv) Question

Is it necessary to confirm both the postal and street address of a client?

Response

A licensee should obtain information on the permanent residential address of a client. Confirmation of both the postal address and the street address should be obtained wherever practicable, however generally, confirmation of the permanent residential address is sufficient. This would include the street address of the customer.

(xvi) Question

Apart from a passport, what other documentation can be used to verify the identity of a child when a parent refuses to provide other supporting documents because they view a licensee's request as a violation of their privacy?

Response

Wherever the documentation required by the FTRR is available, this should be provided to a licensee to enable them to carry out appropriate due diligence on a prospective customer. Minors who are presented as prospective customers, may not have the documentation required by Regulation 3. In such cases, a licensee may rely on Regulation 3 (1) (m) and obtain such documentary or other evidence as is reasonably capable of establishing the identity of the minor. A letter from a responsible person such as a minister of religion, a lawyer, a doctor or a teacher, who knows the minor, may be obtained. The letter should set out the capacity in which the person knows the minor, and should as far as possible speak to the identification details of the minor. A licensee should also verify the identity of the minor's parent or guardian where identification documents for the minor are not available. Licensees should clearly document on the customer file what steps were taken to verify a minor's identity.

(xvii) Question

How does one verify the permanent address of an individual who is resident in The Bahamas but a citizen of another country whose utility bills are in the name of the Landlord?

Response

In such cases, a licensee may seek to obtain a copy of a bank or other financial statement which notes the residential address of the customer or require the individual to provide a letter from immigration authorities as to their permanent address, or request sight of the lease or rental agreement. Where the individual resides in premises owned by his employer, a letter from the employer confirming the residential address may be obtained.

Licensees may confirm client addresses by actually visiting client residences. The details of the visit should be clearly documented on the client file.

APPENDIX

COUNTRIES LISTED IN THE FIRST SCHEDULE TO THE FINANCIAL TRANSACTIONS REPORTING ACT, 2000

Australia
Barbados
Belgium
Bermuda
Brazil
Canada
Cayman Islands
Channel Islands
Denmark
Finland
France
Germany
Gibraltar
Greece
Hong Kong SAR
Ireland
Isle of Man
Italy
Japan
Liechtenstein
Luxembourg
Malta
Netherlands
New Zealand
Norway
Panama
Portugal
Singapore
Spain
Sweden
Switzerland
United Kingdom
United States