



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

Effective Date: 5th February, 2019

1. INTRODUCTION

1.1 The Gaming Board for The Bahamas ("Board") has responsibility for regulating all licensed gaming and activities incidental thereto in The Bahamas, pursuant to the Gaming Act, 2014. All Supervised Financial Institutions (SFIs)¹, which are licensees of the Board, are required to comply with the Financial Transactions Reporting Act, 2018 ("FTRA") and all of the Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT") standards contained therein. For the purposes of administering the FTRA, the Board has responsibility with respect to its licensees. Accordingly, the Board hereby notifies its SFIs of the Board's adoption of an administrative monetary penalties ("AMP") framework, in accordance with the provisions of the FTRA.

1.2 Pursuant to Section 57 of the FTRA, the Board, as a Supervisory Authority², 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. AMPs are monetary sanctions imposed by the Board, under statutory authority, without the Board having to go to court.

1.3 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.

¹ Defined in Section 3 of the FTRA.

² 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."

1.4 The framework takes effect on 5th February, 2019

2. **PURPOSE**

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

3. **ROLE OF THE BOARD AS SUPERVISORY AUTHORITY**

3.1 *Compliance with Industry Laws*

3.1.1 The Board 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 Board in order to determine the next steps.

3.1.2. 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 Board may impose a range of supervisory interventions.

3.1.3 This will ensure that responsible individuals and entities are aware of their obligations thereby helping them to come into compliance voluntarily.

3.2 *Determining the Amount of the Penalty*

3.2.1. The Board will impose penalties on a case-by-case basis, informed by the particular circumstances of each case.

3.2.2. For violations made by a financial institution, the Board may impose a maximum penalty up to \$200,000³ and in the case of an individual, a penalty up to \$50,000.00⁴.

3.2.3. When determining the amount of a penalty that is appropriate and in proportion to the contravention under consideration, the Board will take into account the factors outlined in paragraph 3.3.2 as well as reference made to the **annexed Schedule**⁵.

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

3.3.1. Outlined below is the list of factors that the Board will consider in determining the amount of a penalty. However, the said list is not exhaustive. Further, all of the factors may be relevant to a particular case and there may be other factors not included that are relevant.

³ Section 57(1)(i) of the Act

⁴ Section 57(ii) (supra)

⁵ See Schedule

3.3.2. The above-mentioned factors include the following:

- (a) The gravity and duration of the contravention or failure;
- (b) The degree of responsibility of the person on whom the Board proposes to impose the penalty;
- (c) Whether deceptive practices were utilized;
- (d) Any previous contraventions or failures of the person (Repetition)
- (e) The financial strength of the person;
- (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 Board; or
- (i) Any potential systemic consequences of the contravention or failure.⁶

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

3.4 Issuance of Written Warnings

3.4.1 Where the Board proposes to impose a penalty on a person for breach of the FTRA, the Board will issue a written warning to the person specifying the following information⁷:

- The nature of the contravention which the person is believed to have committed;
- The amount of the penalty; and
- 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 Board.

3.4.2. The Board may extend the period specified in the notice.

3.5 Final Decision

3.5.1. The Board 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 Board will, within a reasonable timeframe, determine whether

⁶ Section 57(4)

⁷ See Section 57(5)

to impose an AMP and will provide written notice of its decision to the financial institution and/or individual.

3.5.2. The decision provided will⁸:

- Be in writing
- Give the Board'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.

3.5.3 If the Board decides not to take the action proposed in the warning issued, or the action referred to in its notice of decision, the Board will give a notice of discontinuance to the person to whom the warning notice or decision notice was given.

3.5.4. The notice of discontinuance must identify the proceedings, which are being discontinued.⁹

3.6 *Payment of Penalty*

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

3.7 *Publication*

The Board 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 Board'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.

⁸ Section 57(8)

⁹ Section 57(9)

SCHEDULE

ADMINISTRATIVE MONETARY PENALTIES UNDER THE FINANCIAL TRANSACTIONS REPORTING ACT, 2018

The Board here notes that this Schedule may be updated from time to time.

No.	Description of Contravention	Section(s)	Classification (Minor/Serious/Very Serious)	BSD (\$) Amount (per violation)
1	Financial institution fails to carry out, document or update a risk assessment.	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.	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.	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.	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.	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.	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.	6(2) - 6(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.	6(2) - 6(5)	Very serious	Up to 50,000
9	Financial institution fails to fulfil	5-9, 11(2)	Very serious	Up to 200,000

	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.	and 14		
10	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.	5-9, 11(2) and 14	Very serious	Up to 50,000
11	Financial institution fails to fulfil the requirements of sections 5 through 9 and 14, and then fails to terminate a business relationship.	5-9, 11(2) and 14	Serious	Up to 25,000
12	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.	5-9, 11(2) and 14	Serious	Up to 25,000
13	Financial institution fails to conduct ongoing due diligence with respect to the accounts and transactions of facility holders.	12	Serious	Up to 25,000
14	Individual knowingly concurs in a financial institution's failure to conduct ongoing due diligence with respect to the accounts and transactions of facility holders.	12	Very serious	Up to 50,000
15	Financial institution fails to comply with obligations for enhanced due diligence.	13	Very serious	Up to 200,000
16	Individual knowingly concurs in a financial institution's failure to comply with obligations for enhanced due diligence.	13	Very serious	Up to 50,000
17	Financial institution fails to maintain books and records as required.	16	Minor	Up to 15,000
18	Individual knowingly concurs in a financial institution's failure to maintain books and records as required.	16	Serious	Up to 25,000
19	Financial institution fails to maintain internal control programs.	19 - 23	Serious	Up to 25,000
20	Individual knowingly concurs in a financial institution's failure to maintain internal control programs.	19 - 23	Very serious	Up to 50,000
21	Financial institution fails, without	15, 17 and	Serious	Up to 25,000

	reasonable excuse, to retain or properly keep/destroy records.	18		
22	Individual knowingly concurs in a financial institution's failure to retain or properly keep/destroy records.	15, 17 and 18	Very serious	Up to 50,000
23	Financial institution fails to submit a report to the Financial Intelligence Unit.	25 - 26	Very serious	Up to 200,000
24	Person knowingly concurs in a financial institution's failure to submit a report to the Financial Intelligence Unit.	25 - 26	Very serious	Up to 50,000
25	Financial institution fails to designate a compliance officer at senior management level.	20(1)	Serious	Up to 25,000
26	Individual knowingly concurs in a financial institution's failure to designate a compliance officer at senior management level.	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 Board.
- 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.