



# INDUSTRY BRIEFING

## FINANCIAL & CORPORATE SERVICE PROVIDERS

Tuesday 30 April 2019  
Pelican Bay  
Freeport, Grand Bahama



Securities Commission of The Bahamas –  
Inspector of Financial and Corporate Services



# LEGISLATIVE DEVELOPMENTS

Christina R. Rolle

Executive Director

Securities Commission of The Bahamas



Securities Commission of The Bahamas –  
Inspector of Financial and Corporate Services



# PRESENTATION OUTLINE

- FCSP Legislative Overhaul & Status
- International Initiatives
  - CFATF
  - OECD
- The Bahamas' Response
- Implications for Registrants & Licensees
- Risk Based Supervision & Examinations



# FCSP LEGISLATIVE OVERHAUL

- Public Consultation, 20 July – 1 September 2017:
  - Financial and Corporate Service Providers Bill, 2017;
  - Financial and Corporate Service Providers (Money Lenders) Rules
  - Financial and Corporate Service Providers (Fees) Rules
- Public Consultation, 7 March – 30 April 2018:
  - Financial and Corporate Service Providers (General) Regulations, 2018;
  - Financial and Corporate Service Providers (Application) Regulations, 2018; and
  - Financial and Corporate Service Providers (Fees) Rules, 2018



# STATUS OF LEGISLATIVE OVERHAUL

## ➤ Financial & Corporate Service Providers Bill & (General) Regulations:

- Amended to reflect comments received;
- Amended to address IBCs conducting financial & corporate services in The Bahamas;
- Updated to facilitate additional services;
  - Financial leasing
  - Financial advisory or consultancy services
  - Financial intermediation services
  - Trading in commodities and other financial instruments
  - Digital custody services
  - Wallet services for digital assets
- To be reissued for public consultation



# STATUS OF LEGISLATIVE OVERHAUL

## ➤ Suite of Rules:

- Financial and Corporate Service Providers (Fees) Rules, 2018 (update to reflect changes in primary legislation)
- Financial and Corporate Service Providers (Money Lenders) Rules (update to reflect changes in primary legislation)
- Financial and Corporate Service Providers (Corporate Service Providers) Rules (Re-write in progress)
- Financial and Corporate Service Providers (Consumer Credit) Rules (Pending technical review)
- Financial and Corporate Service Providers (Money Brokers) Rules (Pending technical review)
- Financial and Corporate Service Providers (Debt Collectors) Rules (Pending technical review)
- Financial and Corporate Service Providers (Bill Paying Services) Rules (draft pending)



# INTERNATIONAL INITIATIVES

## FATF: ICRG ACTION PLAN & STATUS

Action Item	Action taken/pending by the SCB
1) Issue pending AML guidelines, manuals & codes for Non bank FI supervisors to enhance risk based supervision.	<ul style="list-style-type: none"><li>• Securities Industry (AML/CFT)(Amendment) Rules, 2019 and FCSP (AML/CFT) Rules, 2019 issued.</li></ul>
2) Demonstrate commencement of Risk Based Supervision and enforcement	<ul style="list-style-type: none"><li>• Developed new penalty regime.</li><li>• FCSPs &amp; High-Risk SIA/IFA licensees will be subject to AML/CFT focused examinations.</li><li>• Notice of 2019 Risk Based Priorities provided to registrants/licensees and posted to Commission's website.</li></ul>



# INTERNATIONAL INITIATIVES

## FATF: ICRG ACTION PLAN & STATUS

Action Item	Action taken/pending by the SCB
3) Demonstrate competent authorities identifying and tracing money laundering proceeds and freezing/restraining property in ongoing ML prosecutions.	<ul style="list-style-type: none"><li>• SCB developing a monitoring mechanism to track ML/FT matters identified &amp; provide statistical reports.</li></ul>
4) Bahamian authorities to address gaps in TF framework & circulate international sanctions lists without delay.	<ul style="list-style-type: none"><li>• Issued International Obligation (Economic and Ancillary Measures) (Implementation of UNSCRs) Orders and notices and posted on Commission's website.</li></ul>





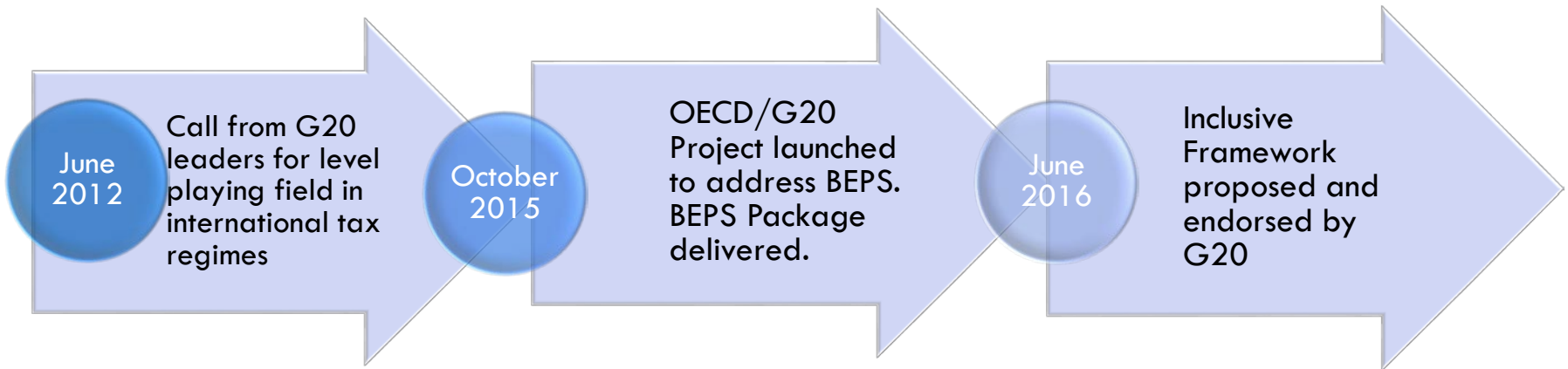
# GLOBAL TRENDS & INITIATIVES (OECD)

- Peer Review Focus Areas
  - Identification of beneficial owners
  - Access to accounting records
- Central Register of Beneficial Owners
- Base Erosion & Profit Sharing (BEPS) Minimum Standards



# DEVELOPMENT OF BEPS FRAMEWORK

**Base Erosion and Profit Shifting (BEPS)** – refers to tax planning strategies by multinational enterprises that exploit gaps/mismatches in tax rules of different jurisdictions to artificially shift profit to low or no tax jurisdictions where there is little or no economic activity.





# THE BEPS PACKAGE

## 15 MEASURES FOR IMPLEMENTATION

Action	Issue Addressed	Action	Issue Addressed
Action 1	Tax Challenges of the Digital Economy	Action 8-10	Transfer Pricing
Action 2	Hybrid Mismatch Arrangements	Action 11	Measuring & Monitoring BEPS
Action 3	Controlled Foreign Co. Rules	Action 12	Disclosure Rules
Action 4	Base Erosion through Interest Deductions	Action 13*	Country by Country Reporting (CbCR)
Action 5*	Harmful Tax Practices	Action 14*	Dispute Resolution Mechanisms
Action 6*	Treaty Abuse	Action 15	Multilateral Agreements
Action 7	Artificial Permanent Establishment Status	<b>Inclusive Framework</b>	<b>Actions 5, 6, 13, and 14 minimum standards for the inclusive framework.</b>



# ACTION 5

## COUNTERING HARMFUL TAX PRACTICES

- Focuses on the elimination of harmful preferential regimes in the area of tax.
- Requires:
  - substantial activity for preferential regimes such as intellectual property regimes, holding company regimes, fund management regimes, finance and leasing regimes, etc.
  - compulsory spontaneous exchange on rulings related to preferential regimes.



# THE BAHAMAS' RESPONSE

- Suite of legislation issued:
  - Multinational Entities Financial Reporting Act, 2018
  - Register of Beneficial Ownership Act, 2018
  - Removal of Preferential Exemptions Act, 2018
  - Commercial Entities (Substance Requirements) Act 2018, Amendment Act, 2019, and Guidelines
  
- Objective to improve compliance with BEPS and other international standards on tax governance and transparency



# COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2018

- Provides for:
  - *substantial* economic presence
  - annual reporting for commercial entities conducting *relevant activities*.
- Scope: Commercial entities registered under:
  - the Companies Act, International Business Companies Act, Partnership Act, Partnership Limited Liability Act, and Exempted Limited Partnership Act, which conduct relevant activities and are resident in The Bahamas.
- Requires Included Entities to demonstrate adequate substance



# SUBSTANCE REQUIREMENTS

The Act sets out requirements to demonstrate adequate economic substance. These requirements are categorized below:

- Operational Requirements
  - Adequate annual operating expenditure
  - Qualified full time employees
  - Physical Presence
- Management & Control (Strategic Decision-Making)
  - Adequate number of Board Meetings in The Bahamas
  - Quorum of Directors present for meetings
- Core Income-Generating Activities
  - Adequate operations commensurate with relevant activity set out in the Act



# REMOVAL OF PREFERENTIAL EXEMPTIONS ACT, 2018

- Addresses ‘ring-fencing’
  - which is deemed a harmful tax practice
  - refers to regimes that afford tax advantages to a specified group. Advantages are usually ‘ring fenced’ from the domestic market.
- Removes exemptions:
  - from fees and/or taxes of companies incorporated/registered under the IBC Act (Ch.309), Exempted Limited Partnership Act (Ch. 312), ICON Act, 2014 and Executive Entities Act, 2011, which operate exclusively outside of The Bahamas.
- Levels tax playing field
  - seeks to make both domestic and international companies registered/incorporated in The Bahamas, subject to the same taxes





# CHANGES TO BUSINESS LICENCE REGIME

- Financial institutions permitted to offer services to domestic & international clients (meeting prescribed regulatory requirements).
- New framework proposes regulated financial entities be exempted from paying a business license fee.
- Companies under the Companies Act (Ch. 308) and International Business Companies Act, (Ch. 309) required to register under the business license Act and pay a value-based business license fee.



# IMPLICATIONS FOR REGISTRANTS

Legislative Change	Implications for Registrants/Licensees
Commercial Entities (Substance Requirements) Act, 2018	<ul style="list-style-type: none"><li>• Introduction of physical presence (core income-generating operations in The Bahamas) and other substance requirements.</li><li>• New Reporting Requirements on compliance with the Act.</li></ul>
Impending Changes to Business License Regime	<ul style="list-style-type: none"><li>• Regulated financial entities to be exempted from paying a business license fee;</li><li>• FIs permitted to offer services to both domestic and international clients;</li><li>• Companies under the CA (Ch. 308) and IBC Act, (Ch. 309) to register under the Business License Act and pay a value-based business license fee.</li></ul>
Multinational Entities Financial Reporting Bill, 2018	<ul style="list-style-type: none"><li>• Filing obligations on aggregate financial information for MNE groups with consolidated revenue over US \$850m.</li></ul>



# RISK BASED APPROACH & 2019 EXAM PRIORITIES

- Three Aims of Commission's RBS Approach:
  - Identify systemic risk in our financial systems
  - Identify the activities of our licensees and registrants that exhibit the greatest amount of risk
  - Focus the Commission's resources on the mitigation and/or elimination of high risk concerns.
  
- Focus for 2019 on-site examinations
  - AML/CFT Thematic Reviews of Financial and Corporate Service Providers
  - Risk Management Including Self Risk-Assessment and Client Risk-Rating Framework
  - Business Conduct and Risk Profile
  - Cybersecurity



# LEGISLATIVE DEVELOPMENTS

- United Nations Security Council Resolutions (UNSCRs)
- Differences Between Current & New FCSP Legislative Regime



Presenter: Ms. Mechelle Martinborough  
Senior Legal Counsel, Office of Legal Counsel



# OVERVIEW

- UNSCR/IOEMA Obligations
- Financial and Corporate Services Providers Bill 2019
- Financial and Corporate Services Providers (General) Regulations 2019



# UNSCR/IOEMA OBLIGATIONS

- What are UNSCRS?
  - High-Risk Countries/Individuals
  - Prohibition of Business Relationships
  
- Enhanced AML/CFT measures
  - Freezing/Seizure of Property
  
- IOEMA - International Obligations (Economic and Ancillary Measures) Act
  - Governor General Issued Orders
  - 'Designated Entities'

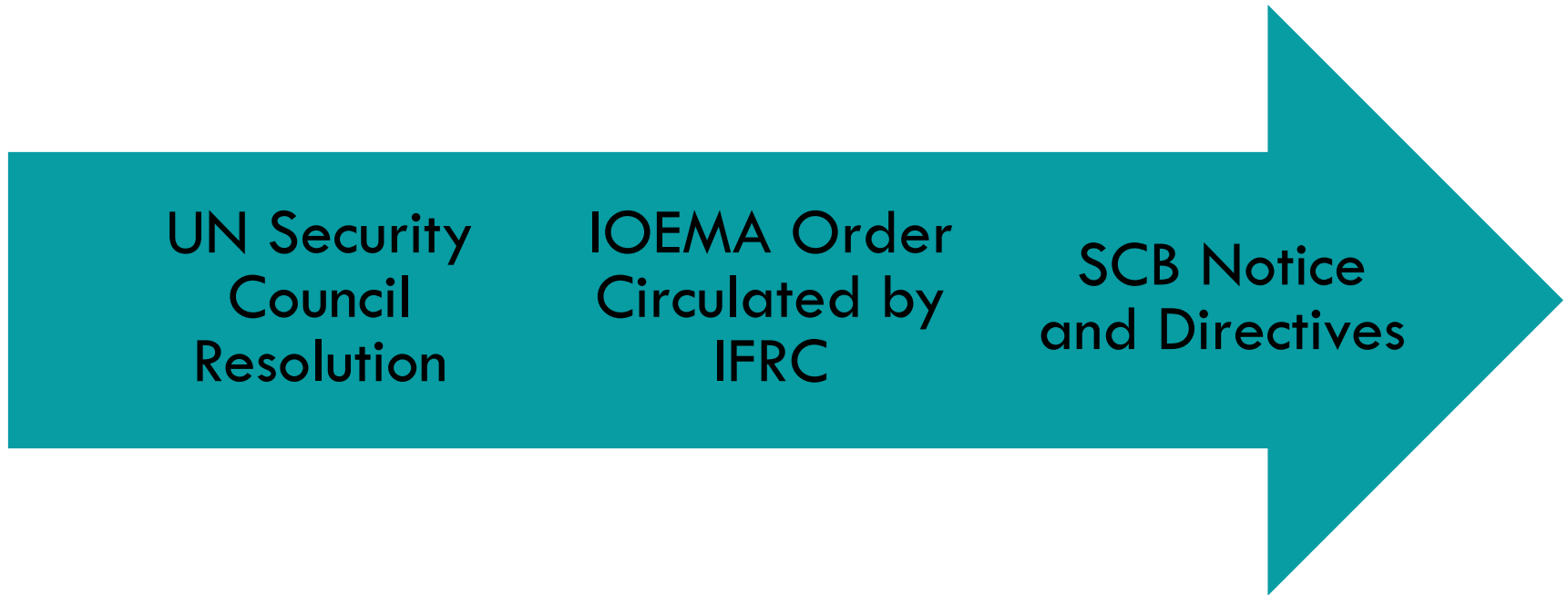


# AML/CFT RISK OVERSIGHTING FRAMEWORK





# UNSCR/IOEMA PROCESS







# IDENTIFIED RISK FRAMEWORK COORDINATOR

- Office of The Attorney General – Mrs. Cassandra Nottage
- Duties include –
  - maintaining a current list of designated entities
  - ensuring domestication of UN Resolutions
  - circulating the lists



# OBLIGATIONS OF LICENSEES

- Regulator Circulates Notice and Order
- Typically Actions Require -
  - Review of Databases and Transaction Records
  - Freeze/Seizure
    - Immediate Freeze
    - Advise Attorney General
    - Advise FIU
    - Advise Designated Entity
- Obligation to Report without Order
- Failure = \$250,000 Fine



# CURRENT STATUS OF ORDERS

- Orders issued thus far:
  - IOEMA Order Iraq and Afghanistan
    - Included designated persons on Sanctions List
  - DPRNK Order
    - Also Included designated persons on Sanctions List
  
- Follow UP Notice to be Issued
  - Additional 2 weeks for Iraq and Afghanistan



# EXPECTATIONS OF REGULATOR

- Information required to Commission
  - Findings
    - Database
    - Transaction Records
- In Additional to Reporting to AG and FIU
- Commission Follow Up Notice
  - Nil Reports
- Annual Declarations



# PURPOSE FOR INFORMATION

- Basis for information is oversight of IOEMA System
  - Statistics
  - Inform of need for Regulatory Action
- Evidence of Implementation of System
  - Effectiveness Measures in CFTAF
- Process is National
- Forms to be Provided

# NOTABLE CHANGES IN FINANCIAL AND CORPORATE SERVICE PROVIDERS REGIME





# AIMS OF PROPOSED FCSPA LEGISLATIVE OVERHAUL

- Robust Regulatory Regime
- Enhance the regulatory authority of the Inspector
- Clear and distinct categories of activities
- Standards of conduct and obligations;
- Commensurate Capital, financial and reporting obligations
- Transitional provisions.



# RESULT OF OVERHAULING FCSPA LEGISLATIVE REGIME

## REPEAL THE EXISTING LEGISLATIVE REGIME

**The Financial  
and Corporate  
Service  
Providers Act,  
2000  
(Amended  
2008)**

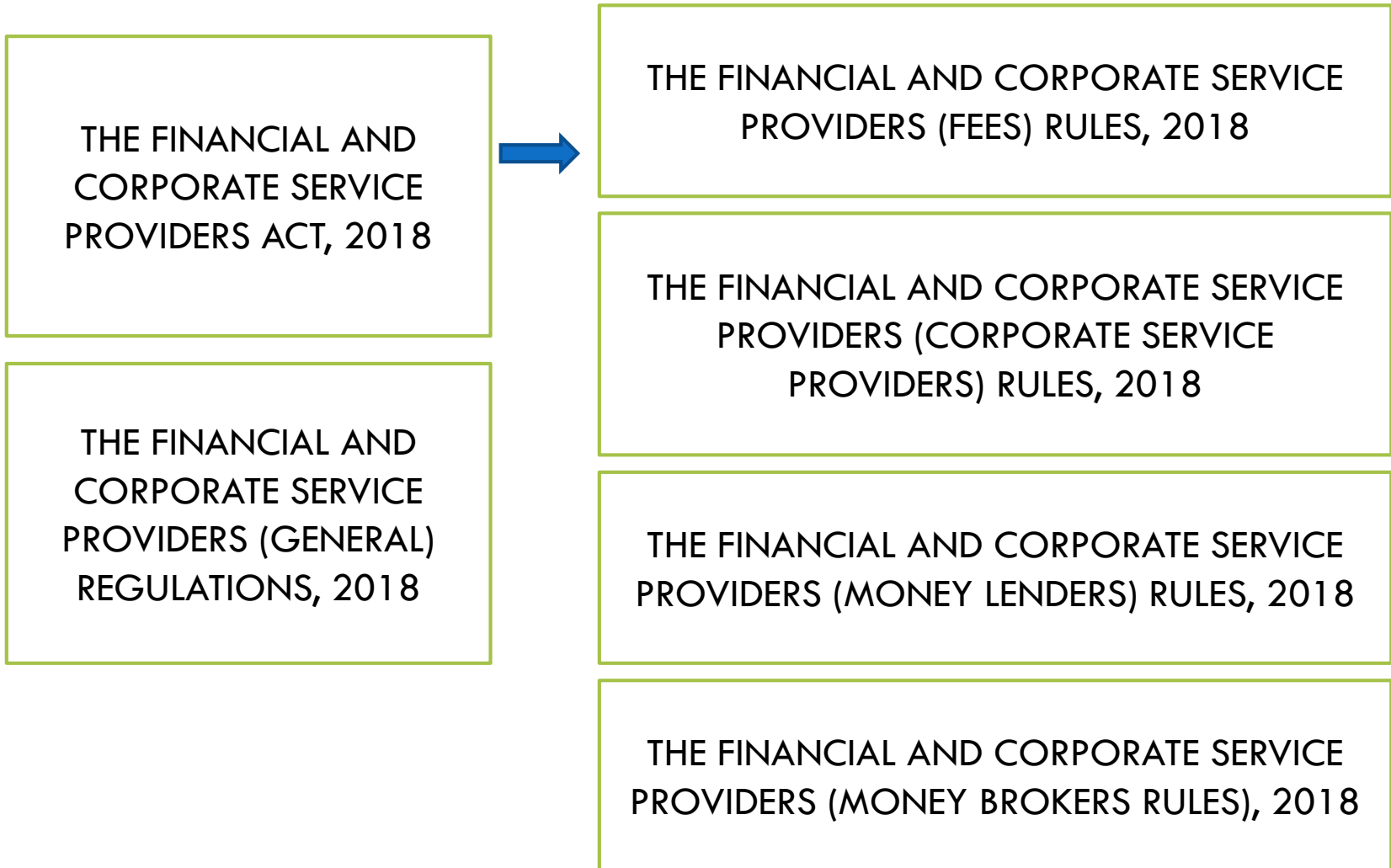
**The Financial  
and Corporate  
Service  
Providers  
(General)  
Regulations,  
2001**

**The Financial and  
Corporate Service  
Providers  
(Licence) Order,  
2001 (Amended  
2009)**





# RESULT OF OVERHAULING FCSPA LEGISLATIVE REGIME





# RESULT OF OVERHAULING FCSPA LEGISLATIVE REGIME

THE FINANCIAL AND  
CORPORATE SERVICE  
PROVIDERS ACT, 2018



THE FINANCIAL AND CORPORATE SERVICE  
PROVIDERS (CONSUMER CREDIT) RULES,  
2018

THE FINANCIAL AND CORPORATE SERVICE  
PROVIDERS (BILL PAYING SERVICES) RULES,  
2018



# EXTERNAL IMPACTS

**AML/CFT RULES**

**GUIDELINES ON THE COUNTERING OF  
THE FINANCING AND THE  
PROLIFERATION OF WEAPONS OF MASS  
DESTRUCTION**

**MANAGEMENT OF ACCOUNTING  
RECORDS GUIDELINES, 2018**

**CRIME RISK MANAGEMENT GUIDELINE**

**SECURITIES INDUSTRY (COMPLIANCE  
OFFICER) RULES, 2018**

# THE FINANCIAL AND CORPORATE SERVICE PROVIDERS BILL, 2019





# KEY CHANGES

## **EXPANDED DEFINITIONS (Part I)**

Introduction of activity specific definitions

Delineation between financial services and  
corporate services

Application section reinforces delineation between  
financial services and corporate services



# KEY CHANGES

## EXPANDED LICENSING REGIME

### (Part II)

Introduction of concept of categorization of activity on licenses

Enhanced licence application process

## EXPANDED LICENSING REGIME

### (Part II)

Confirmation that licenses are annually renewable

Application of automatic administrative penalty for failing to meet the requirements for annual licence renewal



# KEY CHANGES

## **CONDUCT-FOCUSED REGULATION (Part III)**

Express duties on licensees i.e. to maintain professional conduct, to comply and cooperate, etc.

Express requirements concerning the appointment of auditors, the prevention of money laundering

Express requirements to maintain solvency and have adequate financial resources

# KEY CHANGES

## **EXPANDED ENFORCEMENT POWERS (Part IV)**

Power to suspend  
licence

Power to revoke licence

Power to wind-up  
Licensee

Power to apply  
administrative penalty

## **CRIMINAL PENALTIES (Part V)**

Unlicensed activity  
criminalized

Personal liability of  
directors and  
corporate liability





# KEY CHANGES

## **ENHANCED ENFORCEMENT POWERS (Part VI)**

Introduction of Inspector's Functions

Expanded Powers of the Inspector

Improved Inspection and enhanced  
Investigation Powers

Introduction of Power of entry and Power  
to require provision of information



# KEY CHANGES

## **TRANSITIONAL (Part VII)**

Recognition of consequential amendments to other complementary legislation

Continuation of licenses

# THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (GENERAL) REGULATIONS, 2018





# FINANCIAL AND CORPORATE SERVICE PROVIDERS (GENERAL) REGULATIONS, 2018

## LICENSES

### (Part II)

Stipulates that applications are to be made on the form set out in the First Schedule

Stipulates that licenses will list the category of licensed activity



# FINANCIAL AND CORPORATE SERVICE PROVIDERS GENERAL REGULATIONS, 2018

## GENERAL DUTIES AND OBLIGATIONS (Part III)

Duty to:

Make and maintain records

Keep and maintain accounts

Report changes

Seek Commission's approval before  
taking certain actions



# FINANCIAL AND CORPORATE SERVICE PROVIDERS (GENERAL) REGULATIONS, 2018

## GENERAL DUTIES AND OBLIGATIONS

### (Part III)

#### Duty to:

Permit examination and produce documents

Implement data protection measures

Observe confidentiality obligations

Comply with due diligence requirements



# FINANCIAL AND CORPORATE SERVICE PROVIDERS (GENERAL) REGULATIONS, 2018

## GENERAL DUTIES AND OBLIGATIONS (Part III)

Obligation to:

- Implement internal controls to ensure compliance
- Deal fairly with clients
- Avoid conflicts of interest
- Conduct ongoing monitoring of relations with clients
- Appoint appropriately skilled staff and Compliance Officers



# LEGISLATIVE DEVELOPMENTS

- Transition Period Between Current & New FCSP Legislative Regime



Presenter: Mrs. Magan Taylor  
Manager, Supervision





# NEW FINANCIAL AND CORPORATE SERVICE PROVIDERS LEGISLATIVE REGIME

## LICENSES

Confirms that licenses are annually renewable

Penalties for failure to renew as prescribed

Stipulates that applications are to be made on the form set out in the First Schedule

Stipulates that licenses will list the category of licensed activity



# KEY CHANGES

## TRANSITIONAL (Part VII)

Recognition of consequential  
amendments to other  
complementary legislation

Continuation of licenses



# RE-CATEGORISATION PROCESS

1

- Anticipated that the **Re-categorisation/Re-mapping** process will occur during the “**90 Day Transition Period**” following the enactment of the legislation.

2

- The Re-mapping exercise will determine those activities for which:
  - a Licensee will be now “**only**” be **authorized to perform**;
  - a Licensee will be **billed** (from passing of Act onwards)

3

- The Inspector will notify licencees of their proposed remapped categories.
- Licencees will be asked to verify and confirm the proposed categories. Where applicable, Licencees may be required to submit additional documentation.
- Upon completion of the remapping exercise the Inspector will issue new Licence Certificates to transitioning Licencees.



# SECOND & THIRD SCHEDULES

## ACTIVITY

Registration, Management, Administration of an IBC

Provision of Registered agent/office services to an IBC

Provision of Directors, Officers, or Nominee Shareholders to an IBC

Provision of Partners, Registered agent/office services to ELP

Appointment as Executive Entity Agent

Appointment as Trustee of an Authorized Purpose Trust

Appointment as the Registered Representative of a Foundation

Appointment as Registered Representative of Securities Firm

Appointment as Governing Administrator of Investment Condominium

Appointment as Registered Representative of Private Trust Company

Appointment as Representative of Segregated Accounts Company

**IBC Formation  
and  
Management**

**Natural  
Persons**

**Legal  
Persons**

**Executive  
Limited  
Partnership  
corporate  
services**



# FINANCIAL SERVICE PROVIDERS

ACTIVITY	PROPOSED RULES
MONEY LENDING	<b>MONEY LENDERS RULES</b>
MORTGAGE LENDING	
PAYDAY AND CASH ADVANCES	
CREDIT EXTENSION	<b>FINANCE AND CONSUMER CREDIT RULES</b>
DEBT COLLECTION	
MONEY BROKING	<b>MONEY BROKING SERVICES RULES</b>
MORTGAGE BROKING	
BILL PAYING SERVICES	<b>BILL PAYING SERVICES RULES</b>
<b>FINANCIAL LEASING</b> <b>FINANCIAL ADVISORY OR CONSULTANCY SERVICES</b> <b>FINANCIAL INTERMEDIATION SERVICES</b> <b>TRADING IN COMMODITIES AND OTHER FINANCIAL INSTRUMENTS</b> <b>CUSTODY OF DIGITAL ASSETS</b> <b>WALLET PROVIDER SERVICES</b> <b>ESCROW SERVICES</b>	



# THE MONEY LENDERS RULES (FEATURES)

## PRELIMINARY (Part I)

Applies to the money lender  
and all money lending  
contracts

Excludes non-interest loans,  
insurance companies, credit  
unions, pawnbrokers and  
persons deemed non-resident  
for exchange control

## REGULATION OF MONEY LENDING OPERATIONS (Part II)

Imposes the duties of fair dealing and  
responsible lending on money lenders

Stipulates the minimum terms to be  
included in a money lenders contract

Stipulates that only simple interest can  
apply to money lenders contracts

Protects borrowers' right to make  
additional payments or early repayments



# THE MONEY LENDERS RULES (FEATURES)

## REGULATION OF MORTGAGE LENDING OPERATIONS

### (Part IV)

Defines what constitutes  
mortgage lending

Stipulates what can  
happen with respect to  
a defaulted mortgage

**Provides for a transition  
period**

**Section 45 of Rules 90  
days to make application  
to the Commission**



# THE DEBT COLLECTOR RULES (FEATURES)

## REGULATION OF DEBT COLLECTION SERVICES

(Part I/II)

Stipulates what  
activity is subject to  
regulation

Defines who may  
be a debt collector

Stipulates the role  
of a debt collector

Stipulates what  
must happen in  
debt collection  
activities

**Provides for a  
transition period  
Section 14 of Rules**

—

**90 days to make  
application to the  
Commission**





# THE MONEY BROKERS RULES (FEATURES)

## PRELIMINARY

### (Part I)

Defines who is a money broker

Applies to all money brokers and money broking contracts

Exempts persons where money broking is ancillary to a mortgage business, banks and trust companies and real estate brokers



# THE MONEY BROKERS RULES (FEATURES)

## REGULATION OF MONEY BROKERS (Part VI)

Stipulates who may be a  
money broker

Stipulates what constitutes  
prohibited acts and  
practices

## GENERAL PROVISIONS (Part VII)

Criminalizes non-compliance

Provides for a transition period  
Section 43 – 60 days to apply  
to become licensed



# TIPS

1.

- **Be Informed**
- Read the Act and related documents issued by the Inspector.

2.

- **Be aware**
- Check that the proposed activities fall within the definition of regulated activities that are outlined under the FCSPA.

3.

- **Ensure information is correct**
- Check that the remapping and categorization information is correct and any application form and has clearly indicated the category for approval, licensing or registration.



# ONGOING OBLIGATIONS

- Beneficial Ownership (Verification of Identity)
- Management of Accounting Records
- Self-Risk Assessments



Presenter: Mr. Wilfred Bain  
Assistant Manager, Supervision



# ONGOING OBLIGATIONS: CUSTOMER DUE DILIGENCE

- FINANCIAL TRANSACTIONS REPORTING ACT,  
2018 (SECTIONS 12-14)



# ON-GOING DUE DILIGENCE

- Financial institutions shall exercise risk based on-going due diligence throughout the course of each business relationship, including:
  - Ensuring that documents, data, information and records collected under the customer due diligence process are kept updated and relevant; and
  - undertaking regular reviews of existing records, particularly for higher risk facility holders.



# ON-GOING DUE DILIGENCE

- Scrutinizing transactions to ensure that the transactions are consistent with the financial institutions knowledge of the customer, facility holder's risk profile, and, where necessary, the source of funds;
- Ensuring the obligations with regard to high risk facility holders, politically exposed persons, and correspondent relationships are fulfilled at all times



# ON-GOING DUE DILIGENCE

- Enhanced Customer Due Diligence
- Risk Assessments of Politically Exposed Persons





# ONGOING OBLIGATIONS: MANAGEMENT OF ACCOUNTING RECORDS

- FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT, 2000
- COMPANIES (AMENDMENT) ACT, 2013
- INTERNATIONAL BUSINESS COMPANIES (AMENDMENT) ACT, 2011
- SEGREGATED ACCOUNTS COMPANIES (AMENDMENT) ACT, 2011
- EXEMPTED LIMITED PARTNERSHIP (AMENDMENT) ACT, 2011
- INTERNATIONAL BUSINESS COMPANIES (ACCOUNTING RECORDS) ORDER, 2016



# MAINTENANCE OF ACCOUNTING RECORDS

Financial & Corporate Service Providers must observe the obligation to maintain accounting records:

- With respect to their own business operations; and
- With respect to any International Business Company (IBC) or Exempted Limited Partnership (ELP) where the FCSP provides corporate or administrative services.



# SPECIFIC DUTIES REGARDING THE MAINTENANCE OF ACCOUNTING RECORDS

- Maintain accounting records on their own behalf
- Ensure accessibility to accounting records for IBCs and ELPs where they act as registered agent and registered office
- Maintain accounting records for IBCs, where they provide directors, or ELPs, where they provide the general partner



# SPECIFIC DUTIES REGARDING THE MAINTENANCE OF ACCOUNTING RECORDS

- Have on their files, a copy of the statutory declaration where they act as registered office for an IBC; and
- File the statutory declaration with the Registrar General where they act as registered agent for an IBC.



# OTHER CONSIDERATIONS

- Companies whose business turnover does not exceed fifty thousand dollars (\$50,000) per annum are not required to maintain accounts and records
- Accounting records shall be kept for a minimum period of five (5) years from the date of the transaction to which to such records relate



# NATURE AND STANDARD OF ACCOUNTING RECORDS

Licensees, IBC's and ELPs shall ensure that –

- Accounting records are maintained in relation to all sums of money received and expended and indicate the reason for the receipt and expenditure, inclusive of all sales, purchases and other transactions
- Accounting records establish the authorisation of transactions relating to expenditure



# NATURE AND STANDARD OF ACCOUNTING RECORDS

- Accounting records are reliable, in that the records:
  - i. Explain all transactions by providing a record of the transaction along with an adequate summary of its details;
  - ii. Enable the financial position of the licensee, the IBC or the ELP to be determined with reasonable accuracy;
  - iii. Enable the preparation of financial statements, should they be desired or required, at any time; and
  - iv. Include documentation underlying the transaction, such as, invoices, receipts, contracts, conveyances or any other documentation which supports the transaction.



# NATURE AND STANDARD OF ACCOUNTING RECORDS

- There is a written statement included with the accounting records that the records are prepared to the directors' or officers' best, knowledge, information and belief;
- The accounting records show the assets and liabilities of the licensee, IBC or ELP; and
- In the case of a Segregated Accounts Company, the accounting records must be maintained in relation to each segregated account as well as the general account of the company.





# ONGOING OBLIGATIONS: RISK ASSESSMENT

- FINANCIAL TRANSACTIONS REPORTING ACT, 2018  
SECTION 5



# CONDUCT OF RISK ASSESSMENT

Every Financial Institution shall –

- Take appropriate measures to identify, assess and understand its identified risks in relation to:
  - Its facility holders and the countries or jurisdictions of their origin;
  - The countries or jurisdictions of its operations; and
  - Its products, services, transactions and delivery channels.
  
- Develop and implement a comprehensive risk management system approved by the financial institution's senior management and commensurate with the scope of its activities, incorporation continuous identification, **measurement, monitoring and controlling of identified risks.**



# CONDUCT OF RISK ASSESSMENT

- Take appropriate measures to manage and mitigate the risks aforesaid;
- Take account of any risk assessment carried out at a national level and any regulatory guidance issued by its Supervisory Authority; and
- Upon request, provide the Supervisory Authority with a copy of its risk assessment.



# WHEN SHOULD THE ASSESSMENT TAKE PLACE?

- Prior to the launch of a new product or business practice;
- Prior to the use of new or developing technologies;
- When there is a major event or development in the management and operation of the group



# WHAT SHOULD THE ASSESSMENT TAKE INTO ACCOUNT

- The facility holder's:
  - geographic area;
  - product;
  - service;
  - Transaction; and
  - means of delivery risk factors, which shall be proportionate to the nature and size of the financial institution's business.
  
- The outcome of any risk assessment carried out at a national level, and any regulatory guidance issued.



# INSPECTION MATTERS

- Examination Results & Trends for 2019
- Remediation Period & Penalties



Presenter: Ms. Jonique Webb  
Assistant Manager, Risk Analytics & Examinations



# EXAMINATION RESULTS

- Examination Priorities for 2019
- Statistics on FCSP AML/CFT Thematic Examinations
- Common Deficiencies



# 2019 EXAMINATION PRIORITIES

- AML/CFT Thematic Reviews of Financial and Corporate Service Providers;
- Risk Management Including Self Risk-Assessment and Client Risk-Rating Framework;
- Business Conduct and Risk Profile; and
- Cybersecurity





# AML/CFT THEMATIC REVIEWS OF FCSPs

- The Commission has set out to conduct focused reviews of all FCSPs for compliance with:
  - applicable anti-money laundering requirements;
  - sufficiency of KYC documentation; and
  - the effective management of IBCs including the maintenance of accounting records.



# AML/CFT THEMATIC EXAMINATIONS: CURRENT STATUS

- To date, Examiners have conducted a review of 33 FCSPs:
  - Consists of 21 Corporations, 8 Individuals and 4 Partnerships
  - Accounts for 9% of the total population of FCSPs
  - Accounts for over 50% of total IBCs



# COMMON DEFICIENCIES

- Registrants failed to implement a self-risk assessment framework. (Section 5, FTRA, 2018)
- Registrants failed to have declarations on file. As a result, they also failed to provide evidence of accounting records. (Section 2(1)(2), International Business Companies (Accounting Records) Order, 2016)
- Registrants failed to show evidence of relevant employees attending AML training. (Regulation 6(2), FITRR, 2001)
- Registrants failed to provide sufficient due diligence documentation for the verification of corporate entities. (Regulation 5(1), FTRR, 2018)
- Registrants failed to show evidence of ongoing monitoring of client files. (Regulation 12(3), FTRR, 2018)



# RISK MANAGEMENT

- Risk Analytics & Examinations will assess the effective implementation of the self-risk assessment framework for FCSP licensees which is now required by the Financial Transactions Reporting Act, 2018.



# FREQUENTLY ASKED QUESTIONS

- Is there a template for the self-risk assessment?
- What type of information should the registrant submit in the assessment?
- How do I complete the assessment?



# FAILURE TO HAVE DECLARATIONS/ACCOUNTING RECORDS

- Section 2(1) of the IBC (Accounting Records) Order, 2016 requires:
  - A company shall keep at its registered office a declaration stating that –
    - (a) the company is maintaining reliable accounting records; and
    - (b) the accounting records shall be made available to its registered agent.



# ACCOUNTING RECORDS

- All sums of money received and expended and indicate the reason for the receipt and expenditure, inclusive of all sales, purchases and other transactions
- Show the assets and liabilities of the licensee, IBC or ELP



# FAILURE TO SHOW EVIDENCE OF AML TRAINING

## ➤ Examiners are looking for:

- Training material
  - Presenter
  - Location, Date, Time
- Training log
- Certificates





# FAILURE TO PROVIDE SUFFICIENT DUE DILIGENCE

- Potential activity of facility
- Description and nature of business including commencement date, products and/or service provided
- Potential activity of facility size, balance ranges and volume of transactions
- Documentary evidence to satisfy the requirements for the identification and verification of the identity of the beneficial owners of the corporate entity



# FAILURE TO SHOW EVIDENCE OF ONGOING MONITORING OF CLIENTS

- Examiners are looking for:
  - Policies and procedures
  - Evidence of risk rating – e.g. Risk rating form
  - Evidence of review in accordance with risk rating – e.g.. sign-off of review



# REMEDIATION PERIOD

- 90 days to rectify noted deficiencies
- “Please ensure that all deficient areas identified are remediated by **16 July 2019** at the latest. Failure to remediate deficiencies by the deadline may result in administrative penalties.”



Finding 2	Legislation	<p><b><u>Financial Transactions Reporting Act, 2018 – Section 12 – On-going due diligence</u></b></p> <p><i>Every financial institution shall exercise risk based on-going due diligence throughout the course of each business relationship, which shall include -</i></p> <p><i>(a) ensuring that documents, data, information and records collected under the customer due diligence process are kept updated and relevant, and undertaking regular reviews of existing records particularly for higher risk facility holders;</i></p> <p><i>(b) scrutinizing transactions to ensure that the transactions are consistent with the financial intuitions knowledge of the customer, the facility holder's risk profile, and, where necessary, the source of funds;</i></p> <p><i>(c) ensuring the obligations with regard to high risk facility holders, politically exposed persons, and correspondent relationships are fulfilled at all times.</i></p>
	Breach	There was no evidence on file to conclude that █████ clients are risk rated.
	Required Action	█████ must ensure that they risk rate it clients as legislatively required.
	Registrant's Response	



# ANTI-MONEY LAUNDERING & COUNTERING THE FINANCING OF TERRORISM RULES (SIA/FCSPA)

MEHELLE MARTINBOROUGH

SENIOR LEGAL COUNSEL

SECURITIES COMMISSION OF THE BAHAMAS



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# Overview

## ➤ Rules

- Financial and Corporate Service Providers (Anti-money Laundering and Countering the Financing of Terrorism) Rules 2019

## ➤ Guidance Notes

- Sound Management of Risks Related to Financial Crime in The Bahamas – Issued 21<sup>st</sup> August, 2018
- Proliferation and Proliferation Financing – Issued 21<sup>st</sup> August, 2019

# AML/CFT RULES

## Financial and Corporate Service Providers (Anti-money Laundering and Countering the Financing of Terrorism) Rules 2019

- |   |   |
|---|---|
| <p>I. Risk Assessment Framework – r. 2</p> <ul style="list-style-type: none"><li>• Self-Risk Assessments</li><li>• Risk Rating of Clients</li><li>• Oversight Framework</li></ul> <p>II. Internal Controls r. 4-6</p> <ul style="list-style-type: none"><li>• Compliance Officer</li><li>• Money Laundering Reporting Officer</li></ul> <p>III. Customer Identification Requirements r. 9-18</p> <ul style="list-style-type: none"><li>• Due diligence must be complete</li><li>• Enhanced DD</li><li>• Required documentation</li><li>• Required Action if Due Diligence Fails</li></ul> | <p>IV. Customer verification exemptions</p> <ul style="list-style-type: none"><li>• Financial institutions</li><li>• Central/local Governments</li><li>• Publically traded companies</li></ul> <p>V. Third-party Verification r. 14</p> <ul style="list-style-type: none"><li>• Similar Financial Institutions</li><li>• Non-sanctioned jurisdictions</li></ul> <p>VI. Eligible Introducers r. 15</p> <ul style="list-style-type: none"><li>• Confirmations</li><li>• Certifications</li><li>• Documentation</li></ul> <p>VII. Record keeping</p> <ul style="list-style-type: none"><li>• 7 years</li><li>• Originals, microfiche or electronic</li></ul> |
|---|---|



# FINANCIAL CRIME MANAGEMENT

## GUIDANCE NOTE

### What is considered Financial Crime?

#### THE CORE PRINCIPLES

I. *Intolerance to Financial Crimes*

II. Risk Assessment

III. Proper Governance

IV. *Three Lines of Defense*

- *Business Unit*
- *Independent oversight*
- *Auditing*

V. Board Oversight

VI. Business Acceptance

VII. Ongoing Monitoring

VIII. *De-marketing*

IX. *Training*

X. *Cross-border/group wide risk management*





# PROLIFERATION GUIDANCE NOTE

## FINANCIAL & CORPORATE SERVICE PROVIDERS FINANCIAL INSTITUTIONS

- |  |  |
|--|--|
| <p>I. What is Proliferation?</p> <p>II. What is Proliferation Financing?</p> <p>III. UNSCR 1540</p> <ul style="list-style-type: none"><li>• Abstinance</li><li>• Adoption and implementation</li><li>• Establishment and enforcement</li></ul> <p>IV. Operations and Network</p> <ul style="list-style-type: none"><li>• Global exploitation</li><li>• Ordinary financial transactions</li><li>• Cash trade</li><li>• Dual-use goods</li></ul> | <p>IV. Red Flags</p> <ul style="list-style-type: none"><li>• Address/weak financial safeguards</li><li>• Military/research bodies</li><li>• Business profile</li><li>• Pattern of financial activities</li></ul> <p>V. Licensees should:</p> <ul style="list-style-type: none"><li>• Consider proliferation risk factors in AML/CFT risk assessments</li><li>• Added consideration for Countries located in or associated with UN Sanctioned Countries or on a National listing for high risk entities</li><li>• Confirm, assess and continually and monitor the business profile of clients</li></ul> |
|--|--|



# AML/CFT TYPOLOGIES

MAGAN TAYLOR – MANAGER, SUPERVISION

WILFRED BAIN – ASSISTANT MANAGER, SUPERVISION

SECURITIES COMMISSION OF THE BAHAMAS



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# TYOLOGIES – STUDY OF OR ANALYSIS BASED ON TYPES OR CATEGORIES



Presenters: Mrs. Magan Taylor & Wilfred Bain



## Money Laundering

- **Objective is to Place, Layer and Integrate Money into legitimate financial systems**
- **Professional Money Laundering Networks:**
  - **Collection of Associates and Contacts working together to facilitate ML**
  - **Increasingly utilizing business models and service providers for ML such as:**
    - **Foreign exchange brokers**
    - **Securities market deals**
    - **Sale of Shell Companies**
    - **Loans between shell companies**
    - **Real Estate Investments**
    - **Trade based Schemes**

## Terrorist Financing

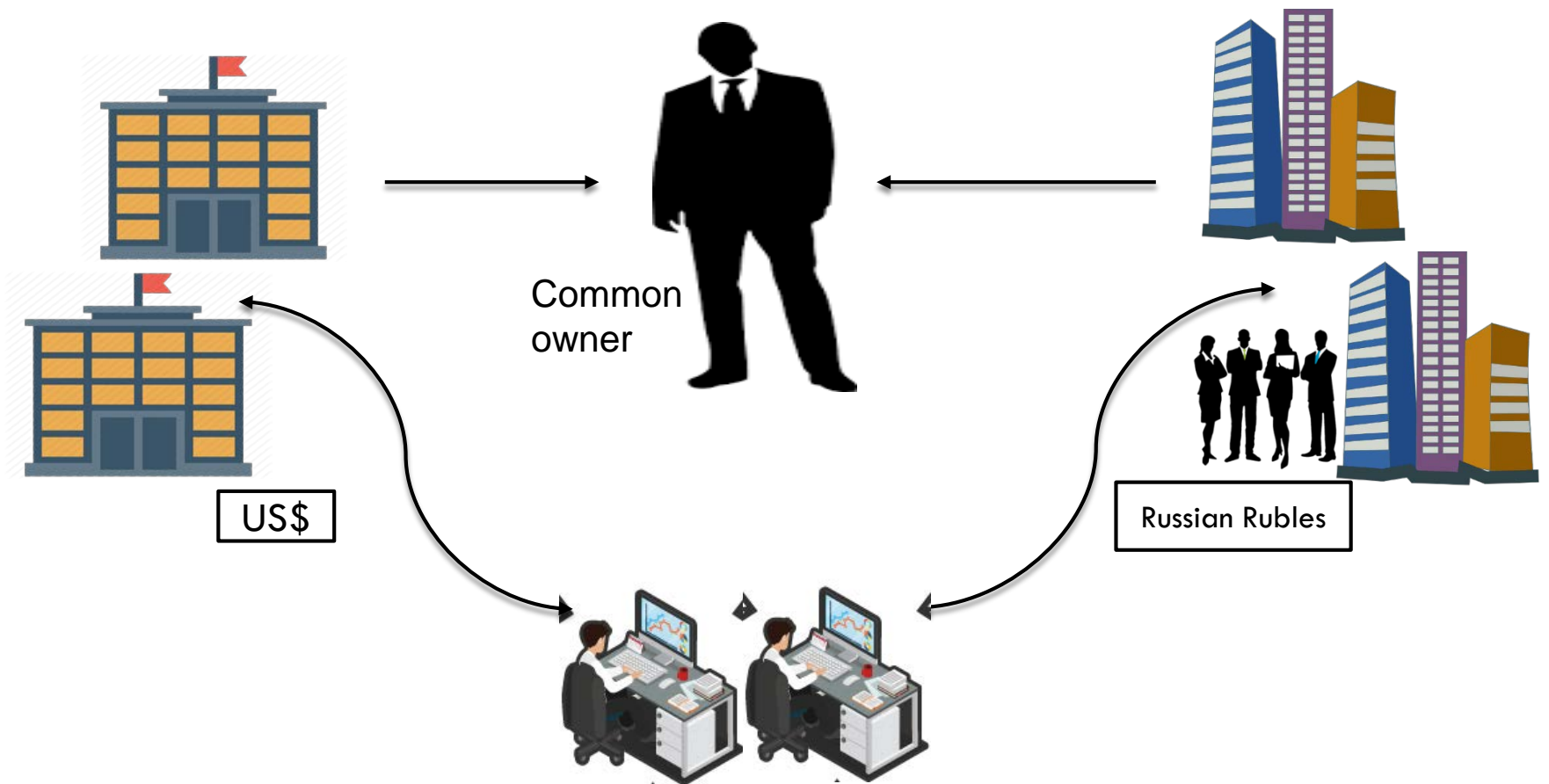
- **Objective is Terrorism**
- **Terrorist Financing Methods include:**
  - **Laundering the Proceeds of Criminal Activity**
  - **Financial Managers to accumulate revenue and establish financial shelters**
  - **Utilizing legitimate business models for investment**
  - **Cyber and Social Media Funding, Hacking of Internet based payment services**



# TYOLOGY 1:

# SECURITIES MARKET DEALS

# TYPOLOGIES





# RED FLAGS/INDICATORS

**1.**

- Dealing in securities or trades in large amounts with no concern for gains or losses or no profit seeking behavior

**2.**

- Shell Companies

**3.**

- Cross Border Transfers

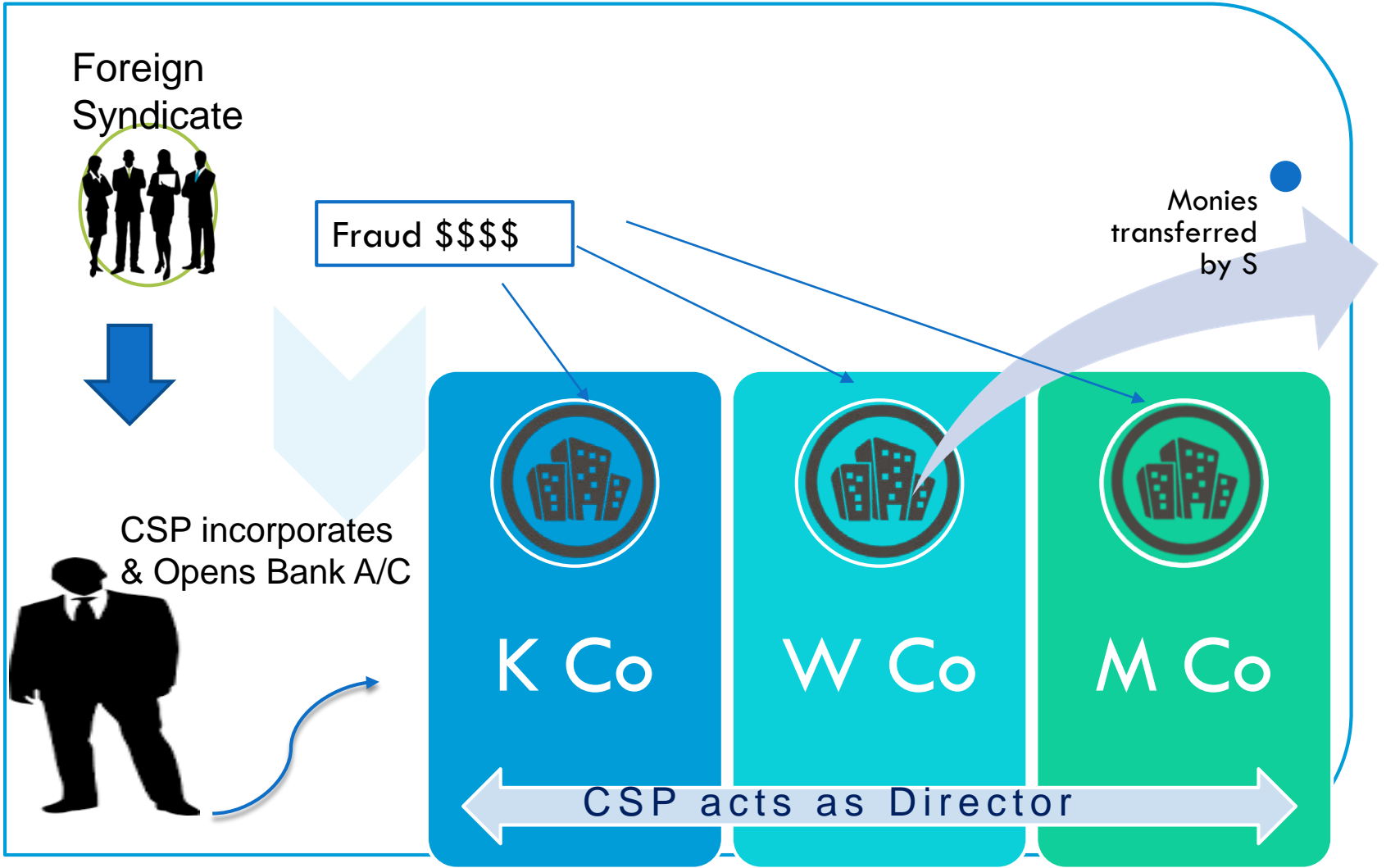


## TYPOLOGY 2:

# USE OF SHELL COMPANIES AND CORPORATE SERVICE PROVIDERS



# TYPOLOGIES





# RED FLAGS/INDICATORS

**1.**

- No real business activities

**2.**

- Incorporation of several companies or shell Companies
- Nominee Directors

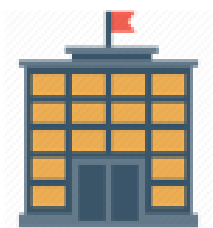
**3.**

- Lack of physical presence

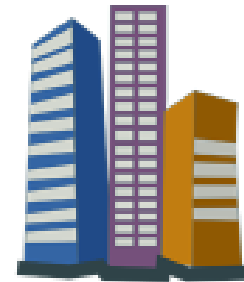


# TYOLOGY 3:

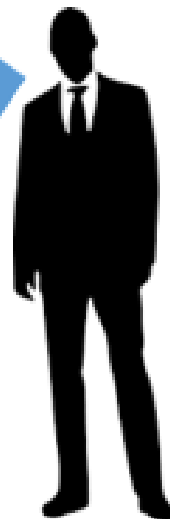
# SHELL COMPANY



COMPANY B



COMPANY A





# RED FLAGS

**1.**

- Legal person or arrangement incorporated/formed in a low tax jurisdiction or international trade or financial centre

**2.**

- Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense

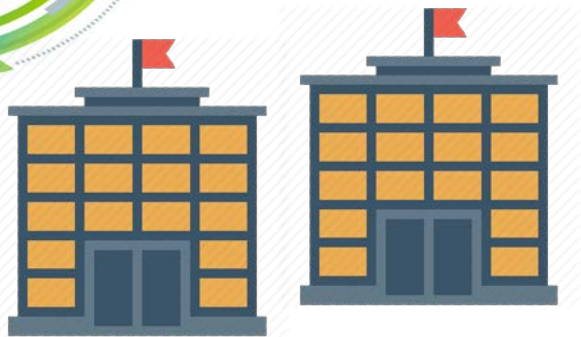
**3.**

- Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification



## TYOLOGY 4:

# MONEY LAUNDERING VIA ROUND ROBIN SCHEME



**AUSTRALIAN COMPANIES**



**ULTIMATE BENEFICIAL OWNERS**



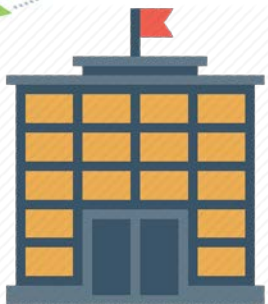
**PAYMENT FROM  
AUSTRALIAN  
COMPANY TO NEW  
ZEALAND COMPANY  
DISGUISED AS  
INVOICE PAYMENT**



**BANK  
ACCOUNT OF  
NEW ZEALAND  
COMPANY**



**ACCOUNTANT**



**BANK ACCOUNT  
OF NEW  
ZEALAND  
COMPANY  
CONTROLLED BY  
ACCOUNTANT**



**BANK ACCOUNT OF  
FOREIGN COMPANY  
CONTROLLED BY  
ACCOUNTANT**



**ACCOUNTANT**





**BANK ACCOUNT  
OF FOREIGN  
COMPANY**



**ACCOUNTANT**



**FALSE LOAN TO  
BENEFICIAL OWNERS**

**FUNDS RETURN  
TO BENEFICIAL  
OWNERS IN THE  
FORM OF FALSE  
LOANS**



**PERSONAL BANK  
ACCOUNTS**



**ULTIMATE BENEFICIAL OWNERS**



# RED FLAGS/INDICATORS

**1.**

- Account activity inconsistent with customer profile

**2.**

- Customer receives international funds transfers declared as loans from a foreign lender

**3.**

- Customers undertaking complicated transfers without a business rationale



# RED FLAGS/INDICATORS

**4.**

- Different ordering customers sending international funds transfers to the same beneficiaries

**5.**

- False invoices created for services not carried out

**6.**

- International funds transfers to a high-risk jurisdiction



# RED FLAGS/INDICATORS

7.

- Multiple high-value international funds transfers to and from Australia with no apparent logical reason



# RISK INDICATORS OF CONCEALED BENEFICIAL OWNERSHIP

- Client reluctant to provide personal information
- The client is reluctant or unable to explain:
  - The business activities and corporate history;
  - Their source of wealth/funds
  - The manner in which they are conducting the activities
  - Who they are transacting with
  - The nature of their dealings with third parties



# RISK INDICATORS CONT'D

## ➤ The client:

- Insists on the use of an intermediary
- is conducting transactions which appear strange given their age
- is signatory to company accounts without sufficient justification
- Conducts financial activities and transactions inconsistent with their customer profile
- Declares income inconsistent with their lifestyle, assets or transactions



# RISK INDICATORS CONT'D

## ➤ The Legal Person/Arrangement:

- Has a name that indicates a service it doesn't provide;
- Incorporated in a low-tax jurisdiction/Int'l trade center;
- Regularly send money to low tax jurisdictions
- Conduct a large number of transactions to a small number of recipients;
- Maintain relationships with foreign professional intermediaries from countries where they have not genuine business transactions;
- Has inconsistency between the wealth of the settlor and the object being settled



# RISK INDICATORS CONT'D

- **Individuals & Legal Persons/Arrangements:**
  - Use multiple bank accounts in multiple jurisdictions without good reason
  - Appear focused on aggressive tax minimization strategies
  - Interested in foreign company formation; particularly in low tax jurisdictions and jurisdictions who promote secrecy
  - Have falsified paper trails
  - Have complex corporate structures that do not appear to legitimately require that level of complexity or do not make commercial sense





# RISK INDICATORS CONT'D

## ➤ Shell companies:

- Have nominee owners and directors
- Have family members as nominees who are not involved in running of the enterprise
- No real business activities undertaken
- Does not have a physical presence
- Exclusively facilitates money transit but does not appear to generate wealth or income
- Address of mass registration: an address that is also the address of many other shell companies



# THANK YOU!





# CONTACT INFORMATION

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