



ADVISORY

JULY 2020

ADVISORY ON THE APPOINTMENT & FUNCTIONS OF THE NOMINATED OFFICER, PURSUANT TO THE PROCEEDS OF CRIME ACT & THE TERRORISM PREVENTION ACT

This Advisory is directed to:

- Nominated Officers
- Chief Executive Officers
- Chief Operating Officers
- Chief Risk Officers
- Legal Officers
- Other Principal Officers

Appointment of a Nominated Officer

A financial institution must designate an officer of the business who performs management functions as its Nominated Officer¹. The Nominated Officer position requires:

- Seniority in post to allow for reporting directly to the Board or through a sub-committee of the Board, on the institution's Anti-Money Laundering/Counter-Financing of Terrorism/Counter-Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/CFP) compliance;
- Extensive knowledge of the AML/CFT/CFP laws, framework, global practices and trends that can guide the institution in establishing and maintaining the requisite controls, policies and procedures in accordance with the statutory requirements and related framework;
- The ability and capacity to undertake the responsibility for on-going monitoring of the fulfillment of AML/CFT/CFP duties by the institution;
- Independence² of the business lines of the institution to allow for an objective assessment, monitoring and enforcement of the compliance of the institution's operations and decision-making with its AML/CFT/CFP obligations under the country's framework and the institution's own AML/CFT/CFP policies and procedures.

¹ See Proceeds of Crime (Money Laundering Prevention) regulation 5(3), and the Terrorism Prevention Act section 18(3)

² The FSC advises that it will not enforce this requirement for smaller firms where, based on an assessment of their size and revenue, a determination has been made that it is not financially viable to appoint a Nominated Officer who is not involved in the operational aspects of the business.

Reporting Obligations of the Nominated Officer

Reports to the Designated Authority

The Nominated Officer is responsible for reporting to the Designated Authority (The Chief Technical Director of the Financial Investigations Division) all such activities and transactions as required by the relevant statutes and the FSC's AML/CFT/CFP Guidelines. The Nominated Officer should take note of any advisories or guidance that may be issued by the Designated Authority in relation to reporting obligations under the AML/CFT/CFP laws and should consult with the Designated Authority accordingly.

In keeping with reporting obligations under section 94 of the Proceeds of Crime Act (POCA), the Nominated Officer is required to institute an internal reporting framework that facilitates a formal disclosure of reportable transactions by employees to the Nominated Officer within fifteen (15) days after having knowledge of the transaction or matter. The Nominated Officer is required to provide advice and guidance to the staff on the identification of suspicious transactions.

Reports to the Board of Directors

An institution's Policy Manual should require the preparation and submission of reports by the Nominated Officer to the Board of Directors ("the Board"), at least once per year or more frequently, as warranted by its risk profile. This is to ensure that the Board is at all times fully aware of the money laundering (ML), terrorism financing (TF) and proliferation financing (PF) risks faced by the institution and of the effectiveness of the institution's measures to address these risks.

This report should include, at a minimum:

- a) An annual overview and evaluation of the overall effectiveness of the institution's AML/CFT/CFP framework, the effectiveness of AML/CFT/CFP measures implemented under each of the various operational areas and product and service types, as well as AML/CFT/CFP training exercises completed and initiatives pursued;
- b) The licensee/registrant's compliance with relevant legislation and the FSC's Guidelines in relation to the institution's AML/CFT/CFP reporting obligations, as well as the entity's own policies and procedures;
- c) Particulars of the risk assessment and risk management activities including:
 - I. Updates on the financial institution's overall relationship with the Designated Authority and general guidance received from that body; and
 - II. Advice on any proposed/impending legislative AML/CFT/CFP amendments, with an assessment of possible impact on the institution with appropriate proposal for the requisite operational changes required for continuing compliance.

Basic Duties & Responsibilities of the Nominated Officer

The Nominated Officer should be responsible for the day-to-day monitoring of the financial institution's compliance with AML/CFT/CFP laws, regulations and industry best practices. That officer should possess the requisite skills, qualification and expertise to effectively perform the assigned tasks; and most importantly, the officer should have access to all operational areas and have the requisite seniority and authority to report independently to the board.

These duties must be independent of the internal audit function.

The duties and functions of the Nominated Officer should, at a minimum, include the following:

1. Act as liaison between the financial institution and the FSC and other competent authorities with respect to compliance matters and investigations;
2. Ensure that:
 - risk assessments are carried out by the financial institution;
 - the appropriate risk profiles are established;
 - the relevant measures and mechanisms commensurate with the risks assessed are implemented; and
 - these assessments are kept up to date and relevant.
3. Evaluate new products and services to determine the risk exposure of the financial institution;
4. Assist business units in the implementation of the compliance programme, which includes informing and edifying the board and the staff of regulatory changes;
5. Ensure that there are adequate systems in place for monitoring transactions and for the identification and reporting of unusual and suspicious transactions;
6. Receive and evaluate reports of unusual/suspicious transactions;
7. Ensure the timely filing of Suspicious Transaction Reports (STRs), Suspicious Activity Reports (SARs); Threshold Transaction Reports (TTRs), Listed Entity Reports (LERs) and Proscribed Entity Reports³ to the Designated Authority;
8. Request appropriate consent from the Designed Authority before conducting prohibited transactions;
9. Coordinate with the institution's audit and legal departments on AML/CFT/CFP matters;

³ Pursuant to the United Nations Security Council Resolutions Implementation (Reporting Entities) Regulations, 2019

10. Periodically provide reports to the senior management and the board on the effectiveness of the AML/CFT/CFP framework;
11. Prepare and update policies and procedures consistent with the requirements of the AML/CFT/CFP legislative framework which should be readily accessible to the financial institution's board, management, staff, and other relevant personnel and parties who may be involved in the operations;
12. Oversee administrative matters related to Code of Conduct and Compliance with AML/CFT/CFP activities;
13. Develop related training material and implement the required training regime;
14. Maintain coordination among the nominated officer of each regulated entity within a group of companies;
15. Carry out site visits to branches/units to observe implementation of internal controls procedures in compliance with established policy and procedure requirements;
16. Utilize monitoring and audit systems to ensure compliance with all AML/CFT/CFP laws and requirements; and
17. Ensure reviews of daily transactions in order to identify unusual/suspicious/potentially fraudulent activities, account excesses, etc.

Confidentiality Provisions

The Nominated Officer is to ensure adherence to the confidentiality provisions established under sections 97 and 104 of POCA, sections 17 and 20 of the Terrorism Prevention Act (TPA) and section 5 of the United Nations Security Council Resolutions Implementation Act (UNSRCIA). Therefore, a financial institution should not disclose:

- a) that it has submitted a report to the Designated Authority;
- b) any information it has with respect to a forfeiture investigation, a civil recovery investigation, a money laundering investigation or a terrorism/proliferation financing investigation.

The institution should therefore have confidentiality procedures as follows:

- a) The requisite systems in place to ensure confidentiality of any investigative order served on it, except to the extent of complying with the order or acquiring legal advice from an attorney-at-law;

- b) The existence of the court order must **only** be disclosed to other employees within the firm, **if** such disclosure is necessary to ensure that the relevant information is provided to fulfill the requirements of the order; and
- c) Officers of the firm apprised of the order must not disclose its existence to other employees.

Fit & Proper Requirements

A Nominated Officer has to be a fit and proper person, which means the Nominated Officer:

- I. has not been convicted of an offence involving dishonesty or of an offence listed in the Second Schedule of POCA;
- II. is not an undischarged bankrupt;
- III. is in compliance with any tax and other statutory requirements imposed by an authorized agency;
- IV. satisfies such solvency and liquidity requirements as the FSC may specify; and
- V. is not associated with a company which, at the time of the association, is engaged in any breaches of any financial services legislation.

The Nominated Officer must also, in the opinion of the FSC, be a person:

- I. of sound probity, who is able to exercise competence, diligence and sound judgment in fulfilling his functions in relation to the licensee/registrant and whose relationship with the licensee/registrant will not threaten the interests of their clients;
- II. who possesses the knowledge, skills and experience which are necessary for the intended functions to be carried out by that person;
- III. who has not engaged in any business practice which appears to the FSC to be deceitful or oppressive or otherwise improper;
- IV. who has not contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice; and
- V. whose employment record does not give the FSC reasonable cause to believe that he carried out any act involving impropriety in the provision of any financial services or in the management of a company.

Fit & Proper Checks

The FSC will, on the appointment of a Nominated Officer and on an on-going basis, conduct an assessment of the fitness and propriety of the Nominated Officer. Financial institutions are required to advise the FSC of the appointment of the Nominated Officer in writing within **fourteen (14) days** and submit the following documents:

- Properly completed Fit & Proper Questionnaire for the relevant industry within which the Nominated Officer operates⁴;
- Valid Police Record; and
- Current Résumé.

Any change in the office of the Nominated Officer must be communicated to the FSC within **fourteen (14) days** of such a change being made. It is also advisable that financial institutions refrain from confirming a person as its Nominated Officer until it has received clearance from the FSC affirming the person's fit and proper status.

For Further Information

*Please contact the Financial Services Commission at Telephone
Numbers: 876-906-3010-2 or by Email to amlunit@fscjamaica.org*

⁴ The questionnaire may be accessed via the FSC's website