

# POCA Reforms and the Accounting Profession: 2013

Robin M. Sykes  
November 2013

# Disclaimer

- This presentation represents my own views, not necessarily those of the BOJ;
- All errors are mine solely;
- Central Bankers indemnity under the BOJ Act section 34E.

# Reminder

- Under the new FATF Recommendations, Accountants are required to be placed under AML/CFT obligations under revised Recommendation 22 and 23;
- **Not all accountants. Does not include government accountants or persons who are employees;**
- Only those that carry out the following activities:
  - buying and selling of real estate;
  - managing of client money, securities or other assets;
  - management of bank, savings or securities accounts;
  - organization of contributions for the creation, operation or management of companies;
  - creation, operation or management of legal persons or arrangements, and
  - buying and selling of business entities.

# Main Obligations under Rec. 22

- Recommendations 10, 11, 12, 15, and 17 must apply to the relevant classes of Accountants
- 10 Customer Due Diligence
- 11 Recordkeeping
- 12 Politically Exposed Persons
- 15 New Technologies
- 17 Reliance on Third Parties

# Recommendation 23

- The requirements set out in Recs 18 to 21 apply to the relevant classes of accountants
- Rec 18 Internal Controls and foreign subsidiaries
- Rec 19 Higher Risk Countries
- Rec 20 Reporting Suspicious Transactions
- Rec 21 Tipping Off and Confidentiality

# In addition Recommendation

## 28

Countries should ensure that DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. This should be performed on a risk-sensitive basis. This may be performed by a supervisor or a self-regulatory body (SRB), provided that such a body can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

The supervisor/SRB should also (a) take necessary measures to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function, e.g. through evaluating persons on the basis of a “fit and proper” test; and (b) have effective, proportionate, and dissuasive sanctions in line with Recommendation 35 available to deal with failure to comply with AML/CFT requirements.

# So where are we?

- One of the key deficiencies in Jamaica's AML Framework is the fact that it does not currently extend to DNFBPs;
- POCA was amended in October 2013;
- TPA was amended October 2013.;
- The POCA (Designated Non-Financial Institutions) Orders have been signed;
- It only extends to accountants carrying out the transactions mentioned;
- For the Accounting profession this becomes effective on April 1, 2013;
- Makes them a part of the Regulated Sector; and
- The PAB will shortly be designated as the Competent Authority for the profession.

# Obligations of the Regulated Sector under POCA

- S. 94(2)\* Making the required disclosure (Suspicious transaction) to either the nominated officer or designated authority in form and manner prescribed.
- Section 94(3)\* paying special attention to complex large unusual transactions, patterns of transactions that are inconsistent with normal transactions.
- S. 94(7)\* adhere to procedures prescribed in Regulations for the purpose of preventing detecting money laundering. Important to note that the law now provides for treatment of high risk jurisdictions as identified by the Supervisory Authority (BOJ/FSC).

# POC(ML) Regulation 6

- Reg 6 Requirement for regulated business to have policies on CDD, Recordkeeping, employee integrity, history, training, independent audit, compliance officer, consultation with competent authority.
- Important Amendment adds the requirement for procedures for assessing the money laundering risk presented by **different products and their different technologies**. This is in keeping with FATF Recommendation 15.
- Also note that breaches can be visited with administrative sanctions in lieu of criminal sanctions.

# POC(ML)R

- Reg 7 Identification and verification, where no update, discontinue business (now also consider making STR)
- Reg 7 Transaction verification procedures to verify the purpose and nature of relationship or one off transaction (now also consider STR)
- Reg 7. Retrospective due diligence based on risk profile of a customer
- New 7A High risk categories and treatment (PEPs and persons specified by Supervisory authority)
- Reg 8 De minimis CDD (\$US 250) for ID, much less than other countries (N/A for remitters). Amended to allow Minister to vary
- Reg 9 Wire transfers. (New information required)

# POC(ML)R

- Reg 10. Non face to face business; reliance on debit from bank account
- Reg 11\* procedures where acting as agent
- Reg 12\* relying on introductions
- Reg 13\* standards of evidence of identity
- Reg 14\* recordkeeping (ID/ Transaction)
- Reg 15 Internal controls for reporting
- Reg 16 No anonymous accounts
- Reg 19\* Branches and Subsidiaries

# Functions of Competent Authority

## New section 91A

The new provision provides for more explicit powers of the Competent Authority:

- (a) powers to carry out inspection/verification exercises (including using a 3rd party);
- (b) powers to issue directions to ensure compliance with the statutory requirements;
- (c) powers to examine and take copies of documents;
- (d) powers to share information on findings from regulator to regulator or the FID (not including protected information)
- (e) Impose a requirement (if none exists) for registration of persons with such particulars that may be prescribed.
- (f) Impose requirements for reporting to the Competent Authority.

The section provides at subsection (3) for the preservation of legal professional privilege. However, subsection (4) makes it clear that this does not apply to information or other matter that is communicated or given in furtherance of a criminal activity.

# Definition of Competent Authority

Competent authority "means the authority from time to time authorized in writing by the Minister to-

- (i) monitor compliance by any type of business in the regulated sector, with the requirements of this Part and any regulations made under this Part; and
- (ii) issue guidelines to businesses in the regulated sector regarding effective measures to prevent money laundering.

# The importance of s. 91A

- The powers under section 91A refine and expand the powers of Competent Authorities which were to monitor compliance and issue guidance.
- Importantly, they constitute a stand alone tool kit for all competent authorities, regardless of their original jurisdiction. So no need to amend PAB, GLC, REB, BGLC, CGC Laws

# Examination of s. 91A: Inspection

- Powers to inspect operations (including using a third party a la the Bahamas Compliance Commission);
- Examine and take copies of documents;
- These powers are fundamental powers of regulators to be in a position to verify compliance;
- Ability to use a third party is critical;
- Also expected that CAs should carry out their activities (including inspection regime) on risk based approach.

# S. 91A Enforcement

- Powers to issue directions (with criminal sanctions for breach). The section also points to the fact that a conviction under this section will also amount to grounds for revocation of licence.
- Also note that Regulation 6 (which speaks to AML policies and measures) allows an option for breach: either a criminal penalty or administrative /disciplinary penalties.
- Enforcement is a critical limb of the AML Framework. Next set of Mutual Evaluations will focus on effectiveness of the regime.

# S. 91A Sharing information

- Share information with other CAs, a Supervisory Authority & Designated Authority.
- This is also fundamental. Regulators must be able to share information and to report findings of breaches of law to law enforcement authorities.
- Recall that the FID is empowered to investigate financial crime in its role as a hybrid FIU.

# S. 91A Registration

- Establish registration requirements;
- This is seen as critical in cases where there are no pre-determined classifications of DNFBPs. So for example jewellers (one category of DNFBP) are not regulated and therefore a registration requirement would be useful in ascertaining who would be the regulated constituents.
- It may also be useful in cases where there is a largely defined class (e.g. accountants) but where the regulated class (those carrying out certain transactions) is a subset.

# POV of the CA's Role

- The CA must issue guidance on how firms can ensure compliance;
- The guidance from a CA will assist the court in determining whether a firm is complying;
- Especially important that the CA works with the Designated Authority particularly in the area of recognizing suspicious transactions and ML Typologies;
- Supervision must take into account the specific features of the industry (large firms and sole practitioners);
- Must be risk based. The risks faced by accounting firms are not the same as banks therefore the same measures need not be applied; and
- Inspection methodology and off site assessments should also bear this in mind.

# REMINDER: UNDER THE TPA

- Minister can designate entities to be reporting entities under s. 15 of the TPA;
- **Designation not yet made;**
- Main obligations refer to suspicious transaction reporting and the reporting of possession or control of assets or property that belongs to a Listed Entity;
- Procedure for the DPP to list entities under s. 14 based on UN Listing. The DPP publishes the listing periodically.

# Where from here?

- Understand the PAB will be carrying out peer reviews with the assistance of the ACCA with an AML component;
- Understand that PAB is seeking to incorporate AML/CFT requirements into the professional rules;
- The PAB will issue guidance for the industry to assist in compliance and suspicious transaction reporting; and
- Critical that all parties be on board for April 1, 2014.

# The End

- Thanks for listening.
- Questions?