

The Financial Action Task Force (FATF) Recommendations – Implications For Jamaican Accountants

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FATF Recommendations and the Accounting Profession

Recommendation 12 requires designated non-financial business and professions including accountants to adhere to recommendations 5, 6, 8, 9, 10 and 11 if they “prepare for or carry-out” transactions for their clients concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;

FATF Recommendations and the Accounting Profession contd...

- management of bank, savings or securities accounts;
- organisation 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.

Objective appears to target businesses and professions that undertakes financial transactions on behalf of their clients

FATF Recommendations and the Accounting Profession contd...

To what extent do RPAs undertake the above activities?

- No data available
- Assessment is that inclusion of those activities in practices is rare at best

BUT

- **The legislation does not limit the application of its requirements to professionals who undertake the activities mentioned above. Hence, once the Minister designates accountants, the legislative requirement of the legislation will apply**

The Customer Due Diligence (CDD) and record-keeping requirements of the above recommendations are as follows:

- #5 – Customer due diligence and record keeping
- #6 – Special procedures for “potentially exposed persons”
- #8 – Money laundering threats arising from new or developing technologies
- #9 – Procedures applicable when relying on intermediaries to perform certain elements of the CDD process and criteria to be met
- #10 – Maintenance of records on transactions for at least 5 years
- #11 – Complex or unusual large transactions

Requirements under Proceeds of Crime Act (POCA)

Section 94 imposes requirements on businesses in a “regulated sector”

- Reporting of persons he “knows” or “believes” is engaged in money laundering (s 94 (2))
- Must pay special attention to complex large transactions (S94 (3))
- Must adopt procedures prescribed in regulations for the purpose of detecting money laundering

The Framework for the Practice of Public Accountancy in Jamaica

- Profession governed by the Public Accountancy Act, which established:
 - The Public Accountancy Board (PAB) which is responsible for:
 - The Institute of Chartered Accountants of Jamaica
- Persons who “practice accountancy” (whether or not they are members of the institute) must be registered with the PAB.

Standard to which RPAs must adhere

- Only “accountants” [approximately 375 of them] are regulated under the Public Accountancy Act.
- So, many of whom are called “accountants” are not subject to regulatory oversight of the PAB

The Framework for the Practice of Public Accountancy in Jamaica contd...

- The criteria for registration with the PAB are generally :
 - Academic and work experience
 - Ordinarily resides in Jamaica
 - Be of good character

AND

The Framework for the Practice of Public Accountancy in Jamaica contd...

A person practises as a public accountant within the meaning of paragraph (a) of subsection (1) if—

- “For reward, he prepares or examines financial, accounting or related statements or issues any written opinion, report or certificate concerning any such statement...” but not as an employee or if he engages in book-keeping, business or cost systems etc...

- in practising accountancy as aforesaid, he holds himself out (whether expressly or by implication) as being a professionally qualified accountant or an expert in accounting or auditing matters.

Standard to which RPAs Must Adhere

- The Act and (existing) Regulations contain few provisions that impose standards on RPAs. When these were drafted, accountants “knew” what is expected of them
- However, revised rules and regulations have been developed based on IFAC standards and have been circulated for comment - available at PAB.org.jm

Relevant Provisions in the Revised Rules and Regulations

Reg 21 contains information relating to:

- Money Laundering
- Client Identification
- Reporting Suspicious Transactions
- Tipping Off

Reg 22-Professional Duty of Confidence in Relation to Defaults and Unlawful Act of Clients

However all rules are subject to local law. “It is the responsibility of RPAS to familiarize themselves with the law that applies to them and ensure that they work within the law”.

Standard to which RPAs must adhere

The Act (at section 13) provides for disciplinary action if an RPA:

1. Is convicted of a criminal offence involving dishonesty
2. Has been suspended or expelled from the ICAJ or another professional accountancy body
3. After an enquiry by the Board is found to have breached any provision of the Act or regulation or found to be guilty of "gross negligence...gross incapacity, or to have been guilty of any act, default or conduct discreditable to the profession..."

Disciplinary action may comprise of removal of the accountant's name from the register, suspension or censure, levy a charge on the accountant for expenses relating to the enquiry

Conclusions

- POCA provisions appear to require RPAs to act contrary to confidentiality, without risking duty of confidentiality to clients. Requires careful consideration if relationships between RPA and their clients not to be irreparably damaged.
- Legislative support required for RPAs to act with confidence – must specify the circumstances in which the reporting requirements, in particular apply.
- PAB regulations will require amendment once relevant legislative amendments implemented.
- Institutional strengthening of PAB required if it is to assume responsibility of monitoring accountants in Jamaica
- Are RPAs the only “accountants” to be monitored?