

Implications for Registered Public Accountants of recent changes in the Proceeds of Crime Act

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Money Laundering

- Process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities
- Purpose is to allow criminals to maintain control over those proceeds and ultimately provide a legitimate cover for the source of their income

Terrorist Financing

- Method by which, directly or indirectly, wilfully and unlawfully, persons provide or collect funds with the intention that the funds should be used, or in the knowledge that the funds are to be used, in full or in part, in order to carry out (a) an act listed in the Schedule to TPA or (b) any other act intended to cause death or serious bodily injuries to a civilian or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to refrain from doing any act.

POCA and TPA

- Unlike money laundering which focuses on the origin of the funds in question, terrorist financing looks at the destination of the funds which may in fact originate from a legitimate source
- Both Proceeds of Crime Act and Terrorism Prevention Act apply to all persons, however special obligations are placed on certain categories of persons – POCA – business in the regulated sector; TPA – foreign companies in respect of their business in Jamaica relating to banking, securities, insurance, investment advice or trusts; financial institutions; any entity designated by the Minister, by order (yet to be designated)

Designated Non-Financial Institution

- The Proceeds of Crime (Designated Non-Financial Institution)(Public Accountants) Order, 2013
- Order comes into effect on 1st April 2014
- Refers to persons registered as Public Accountants pursuant to Public Accountancy Act and who carry out the following activities on behalf of any client:

Designated Non-Financial Institution

- 1) Buying or selling real estate
- 2) Managing client money, securities or other assets
- 3) Managing bank, savings or securities accounts
- 4) Organising contributions for the creation, operation or management of companies
- 5) Creating, operating or managing a legal person or legal arrangement, (such as a trust or settlement)
- 6) Buying or selling a business entity

Duty of Entities To Report under TPA

➤ TPA s 15(2)

- The following entities shall determine on a continuing basis whether they are in possession or control of property (includes money and all other property, real or personal, including things in action and other intangible or incorporeal property) owned or controlled by or on behalf of a listed entity -

Duty of Entities To Report under TPA

- ✓ foreign companies in respect of their business in Jamaica relating to banking, securities, insurance, investment advice or trusts;
- ✓ financial institutions;
- ✓ any entity designated by the Minister, by order to which listed entity reporting is required

Duty of Entities To Report under TPA

- Listed Entity is an entity which a Judge of the Supreme Court, in Chambers, on application by the DPP, declares to be a listed entity
- ✓ The entity must be included on a list of entities designated as terrorist entities by the UN Security Council; or

Duty of Entities To Report under TPA

➤ TPA s 16

- The said entities (i.e. foreign companies etc.; financial institutions; and designated entities) must report all complex, unusual large transactions, or unusual patterns of transactions, which have no apparent economic or visible lawful purpose (commonly referred to as suspicious transaction report)

Duty of Entities To Report under TPA

- ✓ The DPP has reasonable grounds to believe that the entity -
 - has knowingly committed or participated in the commission of a terrorism offence; or
 - is knowingly acting on behalf of, at the direction of, or in association with, an entity referred to on a list of entities designated as terrorist entities by the UN Security Council

Duty of Entities To Report under TPA

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Competent Authority

- POCA – s 91(1)(g)
 - Competent Authority authorised by Minister in writing to:
 - ✓ monitor compliance by any type of business in the regulated sector, with requirements to money laundering and;
 - ✓ issue guidelines to businesses in the regulated sector regarding effective measures to prevent money laundering

Competent Authority

- TPA – s 18 (5)
 - Competent Authority means the Minister of Finance or such other persons as he may specify in writing for the purpose of establishing and implementing programmes, policies, procedures and controls in relation to regulatory controls
- TPA – s 18(4)
 - Entity shall consult with competent authority for purpose of carrying out its obligations to establish regulatory controls

Competent Authority

➤ POCA s 94(7)

- In deciding whether a person committed the offence of failure to report, the court shall consider whether the person followed –
 - Any relevant guidance that was at the time concerned –
 - ✓ issued by a supervisory authority or any other body that regulated, or is representative of, any trade, profession, business or employment carried on by the alleged offender;

Competent Authority

- ✓ approved by the Minister; and
- ✓ published in the Gazette; and
- The procedures prescribed by regulations made under this Act for the purpose of the prevention or detection of money laundering

Competent Authority

- PAB should ensure that its issues the appropriate Guidance and that same meets the aforesaid s 94(7) requirements given:
 - the impending designation of PAB as the Competent Authority;
 - explicit powers granted to the Competent Authority in recent amendments to POCA; and
 - strong possibility that PAB could be designated as Competent Authority under s 18 of TPA and DNFI could be designated under s15 of TPA for reporting purposes

DNFI Designation

- DNFI must establish and implement programmes, policies, procedures, and controls to prevent and detect money laundering including –
 - ✓ establishment of procedures to ensure high standards of integrity of employees (Employee Due Diligence [EDD] Policy and Procedures)
 - ✓ development of a system to evaluate the personal employment and financial history of employees (EDD Policy and Procedures)

DNFI Designation

- ✓ establishment of programmes for training of employees on a continuing basis and for instructing employees as to their responsibilities in respect of the law
- ✓ arrange for an independent audit in order to ensure that the programmes are being implemented

DNFI Designation

- ✓ appoint a nominated officer (officer who performs management functions) to be responsible for ensuring the implementation of programmes, policies etc. and the submission of reports to the Designated Authority (the Chief Technical Director of the FID)
- ✓ consult with the Competent Authority for purposes of carrying out the aforementioned obligations

DNFI Designation

- DNFI cannot form a business relationship or carry out a one-off transaction, with or for another person unless it maintains:
 - ✓ identification procedures and transaction verification procedures
 - record keeping procedures
 - procedures of internal control and communication

DNFI Designation

- ✓ procedures to assess the risk of money laundering arising from its products and business practices (new or existing) and developing technologies applied or used in such products or practices
- ✓ commence or continue any product or practice without implementing measures to identify, manage or mitigate those risks

DNFI Designation

- Record Keeping Requirements
- Records of the following must be maintained for a minimum period of seven (7) years) commencing with the date on which the relevant financial business was completed or the business relations was terminated, whichever occurs later:
 - ✓ identification and verification of identification
 - ✓ transactions and verification of transactions

DNFI Designation

- Customer information must be kept under review to ensure its accuracy and must be updated:
 - at least once in every seven (7) years) during the course of the business relationship or at more frequent intervals as warranted by the risk profile of the business relationship; and
 - whenever there is any doubt about the veracity of adequacy of previously obtained customer information

DNFI Designation

- Customer information includes at a minimum:
 - ✓ name;
 - ✓ current address;
 - ✓ taxpayer registration number or other reference number;
 - ✓ date and place of birth (in the case of a natural person)

DNFI Designation

- In the case of a settlement, trust or other type of legal arrangement-
 - ✓ the identity of the settlor, legal owner or other person who exercises effective control of the legal arrangement, and each beneficiary, including the ultimate beneficial owners of the property concerned in the arrangement; and
 - ✓ the legal status of the arrangement and provisions regulating the power to bind the parties involved

DNFI Designation

- A person other than an individual –
 - ✓ the identity of the individuals who exercise ultimate effective control over that person; or
 - ✓ where an individual who exercises ultimate effective control over that person cannot be identified, the identity of the senior manager who makes or implements decisions with respect to the activities of that person

DNFI Designation

- A body corporate (other than a body corporate listed on a stock exchange) which is licensed or authorised under the laws of the jurisdiction in which it is registered) –
 - ✓ the identity of each director and shareholder (if any) holding 10% or more of the voting rights in the body corporate
 - ✓ the address of the body corporate and provisions regulating the power to bind the body corporate; and
 - ✓ evidence of incorporation

DNFI Designation

- Where an agent is acting on behalf of another person, or body corporate or other legal arrangement –
 - ✓ identity of agent, each beneficiary; and the ultimate beneficial owner of the property or funds
 - ✓ authorisation given to agent

DNFI Designation

- High Risk Business relationships or transactions requiring Enhanced Due Diligence (EDD)
- ✓ Politically Exposed Persons
- ✓ a person not ordinarily resident in Jamaica
- ✓ a trustee
- ✓ a company having nominee shareholders or bearer shares
- ✓ a person specified by the supervisory authority by notice published in the Gazette

DNFI Designation

- PEP –
 - ✓ a head of State;
 - ✓ a member of any House of Parliament
 - ✓ a Minister of Government
 - ✓ a member of the judiciary
 - ✓ a military officer above the rank of captain
 - ✓ a member of the police of or above the rank of Assistant Commissioner

DNFI Designation

- ✓ a Permanent Secretary, Chief Technical Director or chief officer in charge of the operations of a Ministry, department of Government, executive agency or statutory body
- ✓ a director or chief executive of any company in which the Government owns a controlling interest; an official of any political party

DNFI Designation

- ✓ an individual who holds or has held senior management position in an international organisation; and
- ✓ an individual who is a relative or is known to be a close associate of all of the above
- Close associate – individual who is a business partner, or associated in any form, in a commercial enterprise with the person

DNFI Designation

- Relative means spouse, child (including step child or adopted child), spouse of child, parents, brother, sister
- Spouse includes common law spouse
- Single woman and single man used with reference to spouse includes a widow or widower, or divorcee

DNFI Designation

- EDD Procedures include –
- obtaining senior management approval to commence business relationship or one-off transaction
- verification of the source of funds or wealth held by applicant for business and all other persons concerned in the business relationship or one-off transaction

DNFI Designation

- Enhanced monitoring of relationship includes:
 - ✓ more frequent updating of customer information
 - ✓ more detailed information as to nature of relationship
 - ✓ more detailed information about applicant for business
 - ✓ increase in number and timing of controls applied to transaction

DNFI Designation

- ✓ selection of patterns of actions that require more detailed examination; and
- ✓ requirement that the first payment in the transaction be carried through an account, in the name of the applicant for business, with a financial institution; and
- ✓ identification and verification standards equivalent to those required by the Act and regulations

Conclusion

- The aforestated represent a few, and not all, of the implications which arise from designation as a DNFI
- Procedures will have to be put in place for members of the profession to declare to the PAB on an annual basis whether they are involved in the designated activities and examination actions which may flow therefrom

Questions?

THE END