



STILL PAYING FOR CRIME NOT TO PAY

Details on the Increased Compliance Requirements for Financial Institutions, Companies, Professionals and Individuals in Specified Areas of Business Following Passage of the Financial Obligations Regulations, 2010 and the Anti-Terrorism (Amendment) Act, 2010

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This is the last of a three-part series focusing on some of the specific provisions in: the Financial Obligations Regulations, 2010 (the 'Regulations'); and the Anti-Terrorism Act, 2005 as amended by the Anti-Terrorism (Amendment) Act, 2010 (the 'Anti-Terrorism Legislation'). Both of these have a significant impact on Reporting Entities which include financial institutions and listed businesses identified in the previous article.

THE REGULATIONS

The Regulations encompass six main areas with which Reporting Entities should become familiar. These are:

(1) Training Obligations and Compliance Programme

The Regulations provide requirements relating to the appointment of a Compliance Officer (including detailed functions of the position). Employees of Reporting Entities must report any suspicious activities or transactions to the Compliance Officer who, in turn, may be required to report same to the

Financial Investigation Unit (the 'FIU'). Reporting Entities are obligated to provide on-going training to their directors and all members of staff, including their Compliance Officer.

In accordance with specific record-keeping requirements, each Reporting Entity must develop and implement a Compliance Programme with internal reporting rules. The Compliance Programme must be reviewed by their internal and external auditors. Note that internal reporting to a Compliance Officer is not applicable where a Reporting Entity is a legal professional adviser and the knowledge or suspicion is based on advice or information or other matters which came to him in privileged circumstances.

(2) Due Diligence Required in Respect of Customers

Reporting Entities are now required to conduct customer due diligence in the following four situations:

- pursuant to an agreement to form a business relationship;
- in relation to a one-off or occasional transaction of \$90,000.00 or more;
- in relation to two or more one-off transactions, each of which is less than \$90,000.00 (but together the total value is \$90,000.00 or more) where it appears, whether at the outset of each transaction or subsequently, that the transactions are linked; or

- in relation to a one-off or occasional wire transfer of \$6,000.00 or more or two or more one-off transactions, each of which is less than \$6,000.00 (but together the total value is \$6,000.00 or more) where it appears, whether at the outset of each transaction or subsequently that the transactions are linked.

It is important to note that where satisfactory evidence of identity is not obtained, the business relationship or the one-off transaction must not proceed any further and the matter must be reported to the Compliance Officer.

Reporting Entities are not required to obtain evidence of the identity of a person who is an exempt customer in three circumstances:

- where Reporting Entities carry out a one-off transaction with a third party who acts or appears to act as a representative of a financial institution or listed business where the introduction effected by the person has provided written assurance that evidence of identity of the third party introduced by him has been obtained and recorded by him and the person identifies the third party;
- in relation to an employer's pension scheme where the contributions are made by deductions from wages and where assignments of members'

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interest are not permitted under the scheme;

- in relation to a contract for long term insurance which has no surrender clause and may not be used as collateral for a loan.

Where a person applying to do business appears to act as a representative of another Reporting Entity, the recipient of that application must:

- request a written assurance from the representative that the identity of the customer has been properly recorded; and
- take the necessary measures to ensure that the representative is legally authorised to act for the Reporting Entity.

Where the representative client appears to act for a customer who is based in another country, a Reporting Entity may only process the transaction where there are reasonable grounds for believing that the representative client is regulated by an overseas supervisory authority; or based or incorporated in a country where there are laws that give effect to the revised Forty Recommendations and Nine Special Recommendations (on Terrorist Financing) of the Financial Action Task Force.

(3) Due Diligence Required by Insurance Companies: This part details additional requirements and exemptions specific to insurance companies. Interestingly, it provides that transactions which are separated by an interval of three months or more are not required to be treated as linked transactions (for reporting purposes).

(4) Record Keeping: Reporting Entities must keep, in electronic or written form, records of all domestic and international transactions and identification data obtained through the customer due diligence process for a period of at least six years from either the date when the business relationship with a customer ended (in the case of an on-going business relationship; or in the case of a one-off transaction or a series of such transactions, the date of completion of the one-off transaction or the last of the series of such transactions).

Particular record keeping and reporting are required for all domestic and cross-border wire transfers including details related to the originator and recipient of the funds transferred. Where the originator of a wire transfer does not supply the identification information requested by the Reporting Entity, the transaction may not be effected and a suspicious activity report must be submitted to the FIU.

The regulations require that all wire transfers above TT\$6,000.00 must be reported to the FIU as a suspicious transaction. **This will undoubtedly be of significant concern to financial institutions** given that it is likely that almost all wire transfers will exceed the specified amount which will lead to a high level of record keeping and reporting in this area alone. It may be that the threshold amount included is a mistake which will be rectified but, if not, a significant processing burden has likely been placed on both financial institutions and the FIU.

(5) Supervisory Authority: This part provides for reporting to the FIU by the Supervisory Authority (e.g. the Central Bank in relation to those financial institutions listed under the Financial Institutions Act) of any information or belief it has obtained by which it knows, or has reasonable grounds to believe, that a Reporting Entity or any other person has or may have been engaged in money laundering.

(6) Offences and Penalties: This part details actions which constitute offences under the Regulations and related penalties. Where a company commits an offence under the Regulations, any officer, director or agent of the company who directed, authorised, assented to, or acquiesced in the commission of the offence or to whom any omission is attributable is deemed to be a party to the offence and will be held liable on summary conviction or on indictment (as the case may be) to the penalties provided by Section 57 of the Act whether or not the company has been prosecuted or convicted. The penalties range from fines of TT\$500,000 and two years imprisonment for summary convictions to TT\$3,000,000 and seven years imprisonment for convictions on indictment. The Regulations also stipulate that proceedings for an offence under them may not be instituted without the approval of the Director of Public Prosecutions.

THE ANTI-TERRORISM LEGISLATION

The Anti-Terrorism Legislation also imposes reporting requirements on Reporting Entities who know, or have reasonable grounds to suspect, that funds held by the Reporting Entities belong to an individual or legal entity who:

- commits terrorist acts;
- participates in or facilitates the commission of terrorist acts or the financing of terrorism; and/or
- is a person or entity designated as a terrorist by the United Nations Security Council.

Severe penalties may be imposed for non-compliance with these requirements. For instance, a Reporting Entity that is a corporate entity may be liable for a fine of up to two million dollars. In addition, a person who commits an offence may be liable for conviction and imprisonment for as much as twenty-five years. Furthermore, a director of a company may be liable to imprisonment for twenty-five years.

Conclusion

In order to play their part in contributing to the fight against crime (and to avoid the significant penalties for non-compliance), Reporting Entities should ensure compliance with the Act, the Regulations and the Anti-Terrorism legislation which requires among other things:

- the conducting of necessary due diligence;
- specific record keeping and reporting; and
- the implementation of the necessary arrangements for an on-going training and compliance programme for employees and management.



WORKPLACE INJURIES: EMPLOYERS' DUTY AND LIABILITY

Catherine Ramnarine

From office to shop floor, the risk of accident and injury in the workplace is real and ever present. While many employers recognise the importance of workplace safety, often they do not fully appreciate the true extent of their potential liability for workplace injuries.

Occupational Safety and Health Act (“OSHA”)

Breaches of OSHA resulting in death, critical injury or occupational disease are punishable by a maximum fine of TT\$100,000.00 or an amount equivalent to 3 years' pay of the injured or deceased person. An aggrieved person can also apply to the Industrial Court for redress.

Workmen's Compensation Act (“WCA”)

Under the WCA, an employer is liable to pay compensation for injury or death arising from a workplace accident. The value of such compensation is calculated using a prescribed formula and depends, in part, on a medical assessment of the employee's permanent partial disability. Where death or serious and permanent disablement occurs, the employer remains liable even though the accident may have been caused by the employee's own serious and wilful misconduct.

Civil Liability – Breach of Employer's Duty

Under the common law, an employer has a duty to take reasonable care for the safety of employees, including a duty to provide competent staff, proper plant and equipment, a safe workplace and a safe system of work. Where an employee is injured or killed as a result of an employer's failure to discharge this duty, a claim for damages may be brought against the employer at the High Court. Damages are generally awarded for:

- **Pain and Suffering:** The employee's physical pain and emotional distress caused by the injury;
- **Loss of Amenity:** The extent to which the injury has affected the employee's ability to function, e.g. perform household tasks, drive, play sports or participate in other physical activities;
- **Loss of Pecuniary Prospects:** The extent to which the employee's income or earning capacity has been affected;
- **Special damages:** Including medical and other incidental expenses reasonably incurred as a result of the injury; and
- **Dependency:** Where an employee dies, his dependants are entitled to damages for the loss of the financial support that he would have provided to them.

The damages awarded to an employee or his dependants will be reduced by the extent to which he may have caused or contributed to the injury by his own negligence. Where an injury impairs an employee's ability to perform his job, the employer must carefully consider and manage the employment relationship going forward as the way in which a disabled person, in his employment, is treated may potentially give rise to further legal risks and liabilities.

Good Industrial Relations Practice

Where an injured worker is no longer able to perform his substantive job, an employer should make a reasonable attempt to reassign alternative work to him. Where this is not feasible, the Industrial Court has suggested the more humane practice of terminating the employment relationship by compulsory retirement with benefits (known as “medical boarding”). Before deciding, the employer should carefully consider all available medical evidence and allow the worker to make representations.

Equal Opportunity Commission

The *Equal Opportunity Act* prohibits an employer from discriminating against a disabled employee. In particular, an employer may not treat a disabled employee less favourably than other employees in the terms and conditions of employment, access to opportunities for promotion, transfer, training and/or other benefits or by dismissing him or subjecting him to any other detriment. The Act provides for several exceptions, including situations where the disability makes the employee unable to carry out the inherent requirements of his employment, where the employee requires special services and facilities, the provision of which would cause undue hardship to the employer and/or where the employee is likely to be a risk to himself or others. Complaints under the Act are heard by the Equal Opportunity Tribunal, which is empowered to order the payment of compensation, damages and/or fines.

TIPS FOR EMPLOYERS

In order to mitigate against potential liability for workplace injuries, it is important that employers:

- take all reasonable steps to ensure a safe working environment;
- fully understand the extent of your insurance coverage, including the time limits for reporting claims;
- maintain complete and accurate records of workplace accidents and injuries so that you will be in the best position to respond to and defend claims brought against your company.



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