



DEMANDING A CULTURE OF COMPLIANCE: THE OBLIGATIONS ON LAND DEVELOPERS UNDER THE FINANCIAL TRANSACTIONS REPORTING ACT 2018

The Financial Transactions Reporting Act 2018 (FTRA), which was enacted on May 25, 2018, imposed a mandatory requirement on land developers to register with the Compliance Commission (the Commission). A land developer is subject to the obligation to register, if it is:

“engaged in the sale or partition or condominiumizing of any part, parcel, lot or condominium unit of any larger tract or lot of land or any development of land involving the building of units sharing walls, common areas and utilities”.

The Compliance Commission is an independent statutory authority which was established under the Financial Transactions Report Act 2000 (and continued in existence under the FTRA) for the express purpose of ensuring that financial institutions that fall within its remit comply with the substantive laws in The Bahamas relating to Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT).

Any existing land developer that failed to register with the Commission within one month of the coming into force of the FTRA, or any new land developer that fails to register within one month of commencement of business, commits an offence and is liable to a penalty of \$5,000 for each day it remains unregistered.

In addition to the statutory penalties, the Commission may impose administrative penalties on land developers and individuals who knowingly concur with the land developer's failure to comply. This is an alternative form of reprimand which is imposed by the Commission without the commencement of legal proceedings. The maximum administrative penalty that can be imposed by the Commission against a land developer for fail-

ure to register is \$200,000 and against an individual is \$50,000.

Land developers must also report changes in their business structure to the Commission. Such changes include any alterations in their registered office, beneficial ownership, director, partner, Compliance Officer or Money Laundering Reporting Officer. Changes must be reported to the Commission within 3 months. Failure to report is an offence and the offending land developer is liable to a penalty of \$5000 for each failure to notify the Commission. The Commission can alternatively impose an administrative penalty of up to \$125,000 on the land developer, or up to \$35,000 on any offending individual.

In addition to registering with the Commission, land developers have ongoing obligations under the FTRA to:

- Conduct and document a risk assessment of the business' products, services, operations, and overall inherent risks to determine its level of exposure to the risks of money laundering, terrorist financing and other identified risks.
- Establish written risk-based AML/CFT policies and procedures that comply with the provisions of AML/CFT laws and guidelines.
- Appoint a Money Laundering Reporting Officer and a Compliance Officer.
- Identify and verify customers, beneficial owners, politically exposed persons and their source of funds and apply enhanced due diligence to high risk clients.

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- Keep transaction, identification and verification records.
 - Conduct on-going monitoring of customer transactions.
 - Report suspicious transactions of money laundering and terrorist financing to the Financial Intelligence Unit, the Police and other relevant agencies.
 - Ensure that management and appropriate staff receive AML/CTF training annually.
 - Conduct internal AML/CTF compliance reviews of its operations at least once per year.
 - Submit to AML/CFT examination by the Commission and its appointed agents.
- Failure to comply with such obligations is likewise an offence, which renders the land developer liable to imprisonment for a term of up to five years or a fine of \$500,000 or both. Alternative administrative penalties could apply of up to \$200,000 for the land developer, and up to \$50,000 for an individual who knowingly concurs with the land developer's failure to comply.

For more information contact Erica Paine:

Erica Paine, a partner in the law firm of Graham Thompson heads the firm's Grand Bahama office. She is a member of the firm's Property and Development Practice Group, with areas of specialisation comprising all aspects of resort development, including hotels, condo-hotels, financing, permitting and development work; time share and fractional ownership; real property acquisition and sales; title insurance; value added tax; commercial lending, as it relates to real property acquisition and development; and business development within the Grand Bahama "Port Area". She also has considerable expertise in corporate and commercial law, and in financial services law and regulation.



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