



BERMUDA

FINANCIAL INTELLIGENCE AGENCY ACT 2007

2007 : 22

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SCHEDULE

BOARD OF DIRECTORS

WHEREAS it is expedient to establish an independent agency to receive reports of suspicious transactions from financial institutions and other persons, to analyse information and to disseminate it to law enforcement authorities, and for connected purposes:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PRELIMINARY

Short title and commencement

- 1 This Act may be cited as the Financial Intelligence Agency Act 2007 and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Interpretation

- 2 (1) In this Act, unless the context otherwise requires—
 - “banking institution” means an institution licensed under the Banks and Deposit Companies Act 1999;
 - “Board” means the Board of Directors of FIA established under section 4;
 - “criminal conduct” means “drug trafficking” or a “relevant offence”, as defined in section 3 of the Proceeds of Crime Act 1997;

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“Director” means the Director of FIA appointed under section 7;

“FIA” means the Financial Intelligence Agency established under section 3;

“foreign financial intelligence authority” means a competent authority which, in a country or territory outside Bermuda exercises functions corresponding to the functions of FIA under this Act;

“Minister” means the Minister responsible for justice;

“money laundering offence” means an offence under section 43, 44 or 45 of the Proceeds of Crime Act 1997 or section 8 of the Anti-Terrorism (Financial and Other Measures) Act 2004 and includes any act which would constitute such an offence if done in Bermuda;

“non-executive members of the Board” means the members of the Board other than the Director;

“proceeds of criminal conduct” includes the benefit from a drug trafficking or relevant offence as defined in sections 9(3) and 10(3) of the Proceeds of Crime Act 1997;

“relevant institution” has the meaning given in subsection (2);

“terrorist finance offence” means an offence under any of sections 5 to 8 of the Anti-Terrorism (Financial and Other Measures) Act 2004.

(2) In this Act “relevant institution” means—

- (a) a banking institution; or
- (b) an institution falling within a class of institutions designated as relevant institutions by order of the Minister.

(3) The Minister may by order subject to affirmative resolution procedure designate institutions for the purposes of subsection (2).

[Section 2 subsection (1) "criminal conduct" and "proceeds of criminal conduct" inserted by 2010 : 50 s. 51 effective 25 August 2010]

ESTABLISHMENT OF THE FIA

Establishment of the FIA

3 There shall be established a body corporate to be known as the Financial Intelligence Agency ('FIA') with perpetual succession and a common seal.

THE BOARD OF THE FIA

The Board and operational independence of FIA

4 (1) There shall be a Board of Directors of FIA comprised of the following persons—

- (a) a chairman;

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- (b) a minimum of three and a maximum of six other non-executive members;
and
 - (c) the Director.
- (2) The Director shall be an ex-officio member of the Board.
- (3) The Minister shall appoint the chairman and other non-executive members of the Board.
- (4) In appointing the non-executive members of the Board, the Minister shall ensure that the Board shall have persons who in the Minister's opinion have broad experience and expertise in law enforcement, the law, financial services or financial regulation.
- (5) The functions of the Board shall be to manage the affairs and business of FIA.
- (6) The FIA shall be operationally independent and have the authority and capacity to carry out its functions freely, including the autonomous authority to—
- (a) analyse;
 - (b) request; and
 - (c) disseminate,

information in accordance with the provisions of this Act.

[section 4 amended by 2008:27 s.2 effective 15 November 2008; headnote amended and subsection (6) deleted and substituted by 2015 : 53 s. 18 effective 1 January 2016]

Directions to Board

4A (1) The Minister may from time to time, by notice in the Gazette, give to the Board such general policy directions as appear to the Minister to be necessary in the public interest and the Board shall act in accordance with such directions.

(2) A notice issued under subsection (1) is not a statutory instrument for the purposes of the Statutory Instruments Act 1977.

[section 4A inserted by 2008:27 s.3 effective 15 November 2008]

Tenure of office of members; procedures for meetings of the Board

5 (1) Part 1 of the Schedule ("Tenure and qualifications of non-executive members of the Board") has effect.

(2) Part 2 of the Schedule ("Procedure for meetings of the Board") has effect.

DIRECTOR AND STAFF OF THE FIA

Employment of officers, servants and agents

6 (1) The FIA shall, subject to such terms and conditions as it thinks fit and subject to subsection (2), employ such officers, servants and agents as it considers necessary for

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the due performance of its functions, and shall ensure that amongst their number is a barrister and attorney.

- (2) The FIA shall ensure that all—
- (a) officers;
 - (b) servants; and
 - (c) agents,

have the necessary security clearances and an understanding of their responsibilities in handling and disseminating sensitive or confidential information.

(3) The FIA shall, subject to the provisions of this Act, have the independent operational authority to acquire and to deploy the necessary human resources needed to carry out its functions—

- (a) on a singular basis; or
- (b) on an ongoing basis,

free from any undue influence (including political, governmental, or industry-specific undue influence) of a nature that may compromise the operational independence of the FIA.

[Section 6 repealed and replaced by 2015 : 53 s. 19 effective 1 January 2016]

Director of the FIA

7 (1) There shall be a Director of the FIA who shall be appointed by the FIA from persons with relevant experience.

(1A) The Director's appointment shall not take effect until it is approved by the Minister.

(2) A person is disqualified for appointment as Director of FIA if he is a member of either House of the Legislature.

(3) An appointment made pursuant to subsection (1) shall be for a term of not less than three years but not more than five years, and may be renewed.

- (4) The FIA may terminate the appointment of the Director if it is satisfied—
- (a) that he has become bankrupt, that his estate has been sequestered or that he has made an arrangement with or granted a trust deed for his creditors; or
 - (b) that he is unable or unfit to discharge his functions as Director of the FIA.

(5) The Director of the FIA shall, subject to the authority of the Board, administer the affairs and business of the FIA, and shall have such other functions as the Board may assign to him.

[section 7 subsection (1A) inserted by 2008:27 s.4 effective 15 November 2008]

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Immunity from suit

7A (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against the Director or an officer, servant or agent of the FIA, or any member of the Board, in respect of any act done bona fide in pursuance or execution or intended execution of their functions under this Act or any other Act and regulations made thereunder.

(2) Where any member of the Board is exempt from liability by reason only of subsection (1), the FIA shall be liable to the extent that it would be if that member were a servant or agent of the FIA.

(3) Neither the FIA nor any person who is, or is acting as, the Director or an officer, servant or agent of the FIA, or a member of the Board, is liable in damages for anything done or omitted to be done in the discharge or purported discharge of the FIA's functions under this Act or any other Act and regulations made thereunder, unless it is shown that the person acted, or omitted to act, in bad faith.

[section 7A inserted by 2008:27 s.5 effective 15 November 2008]

FINANCIAL PROVISIONS

Funds of the FIA

8 The funds of the FIA shall consist of sums paid out of the Confiscated Assets Fund (established under section 55A of the Proceeds of Crime Act 1997), fees collected pursuant to regulations made under section 16A and such sums as may be appropriated by the Legislature for the purposes of the FIA.

[Section 8 amended by 2009:18 s.3 effective 1 April 2009; amended by 2010 : 50 s. 52 effective 25 August 2010]

Financial year

9 The financial year of the FIA shall end on the thirty-first day of March

Expenditure budget

10 (1) the FIA shall, not later than three months (or such shorter period as the Minister may allow) before the commencement of each financial year, submit to the Minister for his approval estimates in such form and in such detail as the Minister may require in respect of FIA's expenditure on operations in that financial year.

(2) the FIA shall submit as soon as practicable to the Minister for his approval any proposed amendments to any such estimates.

(3) Any such estimates and any such amendments, when approved by the Minister for any financial year, shall constitute the FIA's expenditure budget for that financial year.

(4) The FIA shall not without the Minister's approval spend in total in any financial year more than the total amount of expenditure approved by the Minister for that financial year.

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(5) The Minister may lay down in writing guidelines to be observed by the FIA in the management of its expenditure budget (“Ministerial guidelines”), and the FIA shall comply with any such guidelines.

(6) Where a specific sum is provided in the FIA’s expenditure budget for any financial year in respect of any expenditure item, FIA shall not spend on that item in that financial year any amount in excess of that sum unless the excess expenditure either—

- (a) is made within the Ministerial guidelines; or
- (b) has been approved by the Minister.

Accounts of the FIA

11 (1) The FIA shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in such form as the Auditor-General may direct.

(2) The statement of accounts must present fairly and accurately—

- (a) the financial transactions of the FIA during the financial year to which they relate; and
- (b) the financial position of the FIA at the end of the financial year.

(3) the FIA shall within six months after the end of its financial year cause to be submitted to the Auditor General the statement of its accounts.

(4) Upon completion of the audit, the Auditor General shall present the audited statements to the Board.

Annual reports

12 As soon as practicable after the end of each financial year FIA must issue a report on the exercise of its functions during that year (an “annual report”).

Publication of annual report and accounts

13 (1) The FIA shall, as soon as practicable after the end of each financial year, cause to be made and transmitted to the Minister—

- (a) a copy of the annual report of the operations of the FIA during that year; and
- (b) a copy of the audited annual statement of accounts of the FIA certified by the Auditor General.

(2) The Minister shall as soon as possible after their receipt cause a copy of the report and annual statement of accounts to be laid before both Houses of the Legislature.

FUNCTION AND POWERS OF THE FIA

Functions of the FIA

14 (1) The FIA has the functions—

- (a) of receiving, gathering, storing, analysing and disseminating information relating to suspected proceeds of criminal conduct, potential money laundering offences and potential terrorist financing offences;
 - (aa) of maintaining secure and restricted access to its facilities and to the information referred to in paragraph (a), including its information technology systems; and
 - (b) conferred on it by section 6A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 in relation to regulated non-financial businesses or professions.
- (2) The FIA may disseminate the information referred to in subsection (1)(a) to—
- (a) the Bermuda Police Service; and
 - (b) a foreign financial intelligence authority.
- (3) This subsection applies where the FIA receives from a foreign financial intelligence authority a request for information relating to suspected proceeds of criminal conduct, potential money laundering offences and potential terrorist financing offences. The FIA may—
- (a) conduct enquires in relation to such request, in accordance with its functions and powers under this Act; and
 - (b) subject to subsection (4), disseminate to the requesting foreign financial intelligence authority any information obtained by the FIA in connection with the exercise of its functions.
- (4) Where a foreign financial intelligence authority makes a request for information to the FIA, the FIA may refuse to provide information to that authority if, in the opinion of the FIA, that authority cannot effectively protect the information to be disseminated in accordance with subsection (3).

[Section 14 subsection (1) repealed and replaced, and subsection (2) amended by 2010 : 50 s. 53 effective 25 August 2010; subsection (1) amended and subsections (3) and (4) inserted by 2015 : 53 s. 20 effective 1 January 2016]

Freezing of funds

- 15 (1) The FIA may in the course of enquiring into a suspicious transaction relating to the suspected proceeds of criminal conduct or to a money laundering offence or terrorist finance offence serve a notice on any relevant institution in Bermuda requiring it not to make available any funds to any person specified in the notice.
- (2) Such a notice shall be in writing and may require the relevant institution to freeze funds for a period not exceeding 72 hours.
- (3) The period of 72 hours shall be calculated in accordance with subsection (4).
- (4) In calculating the period of 72 hours no account shall be taken of—
- (a) any Saturday; or

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(b) any day which is a public holiday within the meaning of the Public Holidays Act 1947.

(5) A relevant institution commits an offence if without reasonable excuse it fails to comply with a notice served on it under subsection (1).

(6) A relevant institution guilty of an offence under subsection (1) is liable on summary conviction to a fine of \$50,000.

(7) In this section, “funds” means monies deposited with a relevant institution.

[Section 15 subsection (1) amended by 2010 : 50 s. 54 effective 25 August 2010]

Obtaining information

16 (1) The FIA may, in the course of enquiring into a suspicious transaction relating to a money laundering offence or a terrorist finance offence, serve a notice in writing on any person requiring that person to provide the FIA with such information as it may reasonably require for the purpose of its enquiry.

(2) A person who is required to provide information pursuant to a notice served under subsection (1) must provide the information to the FIA in such manner as the FIA requires.

(3) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

(4) But nothing in this section requires the disclosure of information which is subject to legal professional privilege.

FEES

Regulations imposing fees

16A The Minister may, by regulations subject to the negative resolution procedure, set the application and annual fees to be paid to the FIA by regulated non-financial businesses or professions, as defined in the Proceeds of Crime Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, for the carrying out of its supervisory duties in respect to those businesses and professions under that Act.

[Section 16A inserted by 2010 : 50 s. 55 effective 25 August 2010]

RESTRICTED INFORMATION

Restricted information

17 (1) Except as provided by section 18—

(a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and

(b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources, or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section is guilty of an offence and is liable on summary conviction to a fine of \$50,000 and to imprisonment for two years or to both.

DISCLOSURE OF INFORMATION BY AND TO THE FIA

Permitted disclosure and limitations

18 Information obtained by the FIA in connection with the exercise of its functions may be disclosed by the FIA, of its own volition or upon request, if the disclosure is for the purpose of enabling or assisting ("permitted purpose")—

- (a) the FIA to discharge its functions under section 14;
- (b) the Minister of Finance, the Minister responsible for justice and the Minister responsible for defence to discharge their functions under any statutory provision;
- (c) the Collector of Customs, or a customs officer designated by him, to discharge his functions under any statutory provision;
- (d) the Registrar of Companies to discharge his functions under any statutory provision;
- (e) the Registrar-General to discharge his functions under any statutory provision; or
- (f) the Bermuda Monetary Authority to discharge its functions under any statutory provision.

[Section 18 paragraphs (a) and (b) repealed and replaced by 2008:27 s.6 effective 15 November 2008; paragraph (b) amended by 2010 : 50 s. 56 effective 25 August 2010; paragraph (b) amended by BR 5 / 2011 para. 5 effective 25 February 2011; paragraph (d) inserted by 2014 : 2 s. 53 effective 31 December 2014; repealed and replaced by 2015 : 53 s. 21 effective 1 January 2016]

National and international cooperation

19 The FIA may, in connection with the exercise of its functions under this Act, enter into arrangements for cooperation with bodies or persons (in Bermuda or elsewhere) which it considers appropriate.

Disclosure of information to the FIA

20 (1) Any person may disclose information to FIA if the disclosure is made for the discharge of its functions under section 14.

(2) A disclosure under this section does not breach—

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- (a) any obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

(3) But nothing in this section authorises disclosure of information which is subject to legal professional privilege.

Restrictions on further disclosure

21 (1) Information disclosed by the FIA under section 18 to any person or body must not be further disclosed except—

- (a) for a purpose connected with any function of that person or body for the purposes of which the information was disclosed by the FIA; and
- (b) with the consent of the FIA.

(2) Consent under subsection (1) may be given—

- (a) in relation to a particular disclosure; or
- (b) in relation to disclosures made in circumstances specified or described in the consent.

Information received, etc

21A All information—

- (a) received;
- (b) processed;
- (c) held; or
- (d) disseminated,

by the FIA, shall be securely protected and disseminated or disclosed or used only in accordance with agreed procedures, policies and applicable laws and regulations.

[Section 21A inserted by 2015 : 53 s. 22 effective 1 January 2016; section heading inserted under the powers of the Computerization and Revision of Laws Act 1989 s. 11(m)]

CONSEQUENTIAL AMENDMENTS

Consequential amendments

22 (1) The Anti-Terrorism (Financial and Other Measures) Act 2004 is amended—

- (a) in section 9 by deleting “a police officer” where it occurs in subsection (3) and substituting “the FIA”.
- (b) in section 10 by deleting “a police officer” where it occurs in the subsections (1), (2) and (4) and substituting in each case “the FIA”;
- (c) in section 12 by deleting “police” and “the police” where they occur in subsections (1), (2), (4) and (6) and substituting in each case “the FIA”; and
- (d) in Part 1 of the Schedule—

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- (i) by deleting “a police office or nominated officer” in paragraph 1(4) and substituting “the FIA or a nominated officer”, and
 - (ii) by deleting “a police office or nominated officer” in paragraph 2(4) and substituting “the FIA or a nominated officer”.
- (2) The Bermuda Monetary Authority Act 1969 is amended in section 31(1AA) by inserting the following paragraph after paragraph (ab)—
- “(ac) to the FIA, established under section 3 of the Financial Intelligence Agency Act 2007, for the purpose of its functions;”.

SCHEDULE

(section 5)

BOARD OF DIRECTORS

PART 1

TENURE AND QUALIFICATIONS OF NON-EXECUTIVE MEMBERS OF THE BOARD

Terms of Office

1. Appointment as non-executive member of the Board shall be for a period of not less than three years and not more than five years, except that initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.
2. A person appointed as member in place of a person who ceased to hold office before the end of the term for which he was appointed shall be appointed for the remainder of that person's term of office.
3. A person holding office as non-executive member may at any time resign by giving notice in writing to the Minister.
4. The Minister may by notice in writing remove the chairman or non-executive member from office if satisfied that—
 - (a) he has without reasonable excuse been absent from three consecutive meetings of the board of the FIA;
 - (b) he has been convicted (whether before or after his appointment) of a criminal offence;
 - (c) he is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged; or
 - (d) he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
 - (e) he is otherwise unable or unfit to carry out his functions as chairman or ordinary member.
5. The chairman or a non-executive member is eligible for re-appointment, except where he is removed from office under subparagraph (4).
6. The FIA shall pay to the chairman and each of the non-executive members such remuneration and allowances as may be approved by the Minister.
7. The Minister shall cause to be published in the Gazette the name of every person appointed as member of the Board.

Qualification for appointment

8. A person is disqualified for appointment as member of the Board if he is a member of either House of the Legislature or a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament.

9. The fact that a person has held office as a member of the Board does not disqualify him for re-appointment to that office.

Removal from office

10. A person appointed as member of the Board shall vacate office if he becomes a person to whom paragraph 8 applies.

11. The Minister acting after consultation with the FIA may remove a person from office as non-executive member of the Board if he is satisfied that that person—

- (a) has been absent from meetings of the Board for more than three months without the consent of the Board;
- (b) has become bankrupt, that his estate has been sequestered or that he has made an arrangement with or granted a trust deed for his creditors; or
- (c) is unable or unfit to discharge his functions as a member.

PART 2

PROCEDURE FOR MEETINGS OF THE BOARD

Powers

12. The Board may act notwithstanding the existence of one or more vacancies in its members or a defect in the appointment of a member.

Meetings

13. (1) The Board shall meet as often as necessary or expedient for the due performance of its functions.

(2) The chairman may summon a meeting at any time on giving such notice as in his judgment the circumstances may require.

14. (1) At a meeting of the Board, the proceedings shall be regulated as follows.

(2) A majority of the members of the Board constitute a quorum.

(3) The chairman shall chair meetings of the Board.

(4) If the chairman is absent from a meeting of the Board, the members present at the meeting shall nominate one of their number to chair the meeting.

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(5) If a member of the Board has any direct or indirect interest in any dealing or business with FIA—

- (a) he shall disclose his interest to the Board at the time of the dealing or business being negotiated or transacted; and
- (b) he shall have no vote in relation to the dealing or business, unless the Board has resolved that the interest does not give rise to a conflict of interest.

(6) Subject to subparagraph (5), a member of the Board shall have no vote in relation to any question arising which touches or concerns him.

(7) In the event of an equality of votes, the chairman shall have a casting vote.

(8) Subject to subparagraphs (2) to (7), the Board shall determine its own procedure.

[Schedule Part 2, para 14(2) amended by 2008:27 s.7 effective 15 November 2008]

[Assent Date: 26 June 2007]

[Operative Date: 15 November 2008]

[Amended by:

2008 : 27

2009 : 18

2010 : 50

BR 5 / 2011

2014 : 2

2015 : 53]