



**TURKS AND CAICOS ISLANDS**

**CHAPTER 3.20**

**FINANCIAL INTELLIGENCE  
AGENCY ORDINANCE**

**Revised Edition**

showing the law as at 31 December 2014

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

**FINANCIAL INTELLIGENCE AGENCY ORDINANCE**

Ordinance 11 of 2014 .. in force 17 October 2014 (L.N. 44/2014)

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No Subsidiary Legislation has been made under this Ordinance.





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## **CHAPTER 3.20**

# **FINANCIAL INTELLIGENCE AGENCY ORDINANCE**

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## CHAPTER 3.20

# FINANCIAL INTELLIGENCE AGENCY ORDINANCE

*(Ordinance 11 of 2014)*

AN ORDINANCE TO ESTABLISH THE FINANCIAL INTELLIGENCE AGENCY AS AN INDEPENDENT AGENCY TO RECEIVE REPORTS OF SUSPICIOUS TRANSACTIONS FROM FINANCIAL INSTITUTIONS AND OTHER PERSONS; TO GATHER, STORE, ANALYSE AND DISSEMINATE INFORMATION TO LAW ENFORCEMENT AUTHORITIES AND RELEVANT BODIES; AND FOR CONNECTED PURPOSES.

### Commencement

*[17 October 2014]*

### PART I

#### PRELIMINARY

### Short title

1. This Ordinance may be cited as the Financial Intelligence Agency Ordinance

### Interpretation

2. In this Ordinance—

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

“Board” means the Board of Directors of the Agency established under section 7;

“benefit” includes any property, service or advantage, whether obtained directly or indirectly;

“Chairperson” means a person appointed as chairperson of the Board under section 7;

“Director” means the Director of the Agency appointed under section 20;

“financial crime” means an offence involving money or other benefits and includes an offence involving fraud, dishonesty, money laundering or terrorist financing;

“financial institution” means a person carrying on any financial business;

“foreign financial intelligence authority” means a competent authority in another jurisdiction which exercises functions corresponding to the functions of the Agency under this Ordinance;

“member” means a member of the Board;

“money laundering” has the same meaning assigned to it under the Proceeds of Crime Ordinance;

“money laundering offence” has the same meaning assigned to it under the Proceeds of Crime Ordinance;

“terrorist financing” has the same meaning ascribed to it under the Proceeds of Crime Ordinance;

“terrorist finance offence” has the same meaning assigned to it under the Prevention of Terrorism Ordinance; and

“terrorism order” means an order listed under the definition of “terrorist financing legislation” under the Proceeds of Crime Ordinance.

## PART II

### FINANCIAL INTELLIGENCE AGENCY AND BOARD

#### **Establishment of Agency**

**3.** (1) There is hereby established an Agency to be known as the Financial Intelligence Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name, and subject to the provisions of this Ordinance, shall do or perform such acts or things as bodies corporate may, by law, do or perform.

(3) The Agency shall not have power to lend or borrow money, or to purchase, hold and dispose of land and any other property.

#### **Seal of Agency**

**4.** (1) The seal of the Agency shall be such device as shall be determined by the Agency and shall be kept by the Director.

(2) The affixing of the seal shall be authenticated by the Chairperson and the Director, or any other person authorised in that behalf by a resolution of the Board.

(3) Any contract or instrument which if entered into or executed by a person who is not a body corporate is not required to be under seal, may be entered into or executed without a seal by the Chairperson, the Director or any person authorised by the Board in that behalf.

#### **Functions of Agency**

**5.** (1) The functions of the Agency shall be to—

- (a) receive, gather, store, analyse and disseminate information relating to suspected proceeds of crime, potential money laundering and money laundering offences and potential terrorist financing and terrorist finance offences, including receiving, analysing and disseminating disclosures made under the Proceeds of Crime Ordinance;



- (b) conduct inquiries for purposes of gathering information under this Ordinance, the Proceeds of Crime Ordinance or any other enactment; and
  - (c) request, access, exchange, receive, process, maintain, correlate, store, analyse, interpret and provide feedback on—
    - (i) information (including information from any foreign financial intelligence authority) disclosed to it, or obtained by it, for the purposes of this Ordinance, the Proceeds of Crime Ordinance or any other enactment;
    - (ii) suspicious transaction reports and other reports made to, or received by the Agency under this Ordinance, or a terrorism order or under any other enactment; and
    - (iii) trends and typologies for the combating of money laundering activities and the financing of terrorism activities.
- (2) Without limiting subsection (1), the Agency—
- (a) shall receive all disclosures of information, including information from a foreign financial intelligence authority, which—
    - (i) concern the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime, suspected money laundering, suspected terrorism or the suspected financing of terrorism; and
    - (ii) which are relevant to its responsibilities as a financial intelligence agency;
  - (b) shall receive requests for information from a foreign financial intelligence authority concerning the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime, suspected money laundering, suspected terrorism or the suspected financing of terrorism;
  - (c) may enter into such written agreements, arrangements or memoranda of understanding with foreign financial intelligence authorities as the Board considers necessary or desirable for the discharge or performance of the functions of the Agency including for the exchange of information;
  - (d) shall retain for a minimum period of five years a written record of—
    - (i) all information received, requested or disseminated by the Agency; and
    - (ii) all agreements, arrangements or memoranda of understanding entered into under paragraph (c);
  - (e) may provide such feedback to persons who have disclosed information to the Agency as it considers appropriate;
  - (f) shall collect, compile and publish annually in such manner and form as the Board determines, statistical information relating to

disclosures made to the Agency and any dissemination of such disclosures by the Agency; and

(g) has such other functions as may be specified in this or any other Ordinance.

(3) The Agency shall disseminate the information referred to in subsection (1) to—

(a) the Royal Turks and Caicos Islands Police Force; and

(b) any other public body, law enforcement authority (including a foreign law enforcement authority), and foreign financial intelligence authority.

### **Power of Agency to freeze funds**

6. (1) The Agency may, in the course of inquiring into a suspicious transaction relating to money laundering and money laundering offences, terrorist financing and terrorist finance offences or financial crimes, serve notice on any relevant financial institution in the Islands, requiring it to freeze or not to make available any funds to any person specified in the notice.

(2) A notice served under subsection (1) shall be in writing and may require the relevant financial institution to freeze funds for a period of three days.

(3) In calculating the three days specified in subsection (2), the following shall be excluded –

(a) a Saturday and Sunday;

(b) a day which is a public holiday under the Public Holidays Ordinance.

(4) A financial institution which fails to comply with a notice made under this section commits an offence and is liable on conviction on indictment to a fine of \$250,000.

(5) In this section, “funds” means moneys, or any monetary or negotiable instrument deposited or held in an account.

### **Board of Agency**

7. (1) The Agency shall be governed by a Board of Directors which shall consist of not more than five members, including the Chairperson, appointed by the Governor under subsection (3).

(2) The Chairperson of the Anti-Money Laundering Committee, Commissioner of Police and Director of Public Prosecutions shall be *ex-officio* members of the Board.

(3) A member appointed under subsection (1) shall be appointed from persons who have a broad experience and expertise in law enforcement, the law, financial services or financial regulation.

(4) The Governor shall cause to be published in the *Gazette* the name of every person appointed as a member of the Board.

(5) For purposes of this section, the “Anti-Money Laundering Committee” means the Committee established under the Proceeds of Crime Ordinance.

### **Powers of Board**

8. (1) The Board shall manage the affairs and business of the Agency.

(2) The Governor may from time to time, by Notice published in the *Gazette*, give to the Board such general policy directions as appears to the Governor to be necessary in the public interest, and the Board shall act in accordance with such directions.

### **Tenure of members of Board**

9. (1) A member shall hold office for a term not exceeding three years, and shall be eligible for re-appointment.

(2) Subject to subsection (1), the members may initially be appointed for such periods and in such manner as to secure the appointments to expire at different times.

### **Disqualification, removal and resignation of members**

10. (1) A person shall not be appointed as a member who—

(a) has under any law in force in any country or in the Islands –

(i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged; or

(ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside;

(b) within a period of ten years immediately preceding the date of his proposed appointment, has been convicted—

(i) in the Islands, of a criminal offence; or

(ii) outside the Islands, of an offence which if committed in the Islands would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he has not received a free pardon;

(c) is a member of the House of Assembly;

(d) is an employee of Government; or

(e) is certified as being mentally ill or disordered.

(2) The Governor may—

(a) at any time revoke the appointment of a member as the Governor may think is expedient to do so; or

(b) by notice in writing remove a member from office—

- (i) in the event of the occurrence of anything which would render the member ineligible for appointment as member under subsection (1);
  - (ii) where the member is absent without leave from the Chairperson from three consecutive meetings of which he has been given notice;
  - (iii) where the member contravenes the provisions of this Ordinance or otherwise misconducts himself to the detriment of the objectives of the Agency or of the public interest; or
  - (iv) where the member fails to comply with sections 15, 16 or 17.
- (3) A member may at any time resign his office by notice in writing to the Governor.
- (4) For purposes of subsection (2)(b)(iii), “misconduct” includes any act done without reasonable excuse by a member which—
- (a) amounts to failure to perform in a proper manner any duty imposed on the member;
  - (b) is prejudicial to the efficient conduct of the Board; or
  - (c) tends to bring the Board into disrepute.

### **Vacation of office of member**

**11.** The office of a member shall become vacant—

- (a) in the event of the occurrence of anything which would render a member ineligible for appointment as member under section 10(1);
- (b) upon the death of the member;
- (c) if the appointment of the member is revoked by the Governor or the member has been removed from office under section 10(2);
- (d) upon delivery of written resignation by the member under section 10(3); or
- (e) if the member has contravened the Integrity Commission Ordinance.

### **Filling of vacancy**

**12.** (1) Where the Governor is satisfied that a member is temporarily incapacitated by illness, absence or other cause from satisfactorily performing the duties of his office, the Governor may under section 10(1), appoint another person to act temporarily in his place for a period not exceeding six months, or as the Governor may specify.

(2) On the death of, or vacating of office by a member, the Governor shall under section 10(1), appoint another person to be a member in place of the member who vacates office, for the remaining period of office of such member.

(3) Subsection (2) shall not apply where the remainder of the period for which the member whose office has been vacated is less than six months.

## Remuneration, allowances and expenses

13. A member or co-opted member of the Board shall be paid such remuneration, allowances and travelling expenses incurred in connection with service on the Board, as the Governor may approve.

### PART III

#### MEETINGS AND PROCEEDINGS OF BOARD

### Meetings of Board

14. (1) Subject to this Ordinance, the Board shall regulate its own procedure.

(2) The Board shall meet as often as is necessary or expedient for the discharge of its functions, but in any case, at least four times a year, and such meetings shall be held at such place, day and time as the Chairperson in consultation with the Director may determine.

(3) A meeting shall be called by the Chairperson upon giving written notice of not less than fourteen days.

(4) The Chairperson may at any time call a meeting by giving a shorter notice where the urgency of any matter does not require the giving of notice under subsection (3).

(5) There shall preside at any meeting of the Board—

(a) the Chairperson; or

(b) in the absence of the Chairperson, a member elected by the members present at a meeting for purposes of presiding over that meeting.

(6) A quorum at any meeting of the Board shall be four members.

(7) A decision of the Board shall be passed by a simple majority of the members present and voting, and in the case of an equality of votes, the person presiding shall cast a vote in addition to his deliberative vote.

(8) The minutes of a meeting of the Board shall be kept in a proper form, and shall be confirmed by the person presiding as soon as practicable after any meeting, and before any subsequent meeting of the Board.

(9) The Board may co-opt any person whose presence it considers necessary to assist or advise at any deliberation of the Board, but such person shall not form part of the quorum or have any right to vote.

### Disclosure of interest

15. (1) Where a member is present at a meeting of the Board at which meeting a matter which is the subject of consideration is one in which the member has any pecuniary interest, directly or indirectly, in a contract, proposed contract, licence or other matter, the member shall as soon as practicable after the commencement of the meeting, and before the matter is discussed, disclose his interest and shall not, unless the Board otherwise directs, be present for any consideration or discussion of any question touching upon such matter.

(2) Where a member has disclosed his interest and the Board allows a member to take part in any consideration or discussion under subsection (1), that member shall not vote on such matter.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(4) Where a member fails to disclose his interest under subsection (1) and a decision by the Board is made benefiting the member, such decision shall be null and void to the extent to which it benefits that member.

(5) A member who contravenes this section commits an offence and is liable—

- (a) on summary conviction to a fine of \$20,000 or to imprisonment for a term of two years, or to both; or
- (b) on conviction on indictment to a fine of \$50, 000 or to imprisonment for a term of three years, or to both.

### **Pecuniary interest**

**16.** (1) For the purposes of section 15, a member shall be treated as having an indirect pecuniary interest in a contract, proposed contract, licence or other matter if—

- (a) the member or any nominee of his is a member of a company or other body which has a direct or indirect pecuniary interest in the contract, proposed contract, licence or other matter under consideration;
- (b) the member is a partner, or in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration;
- (c) the member or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration; or
- (d) the member's spouse or child has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration.

(2) Subsection (1) does not apply to membership of, or employment by, any public body.

(3) The Chairperson may, subject to such conditions as he may determine, appoint persons to act as members for any specified period, in any case in which the number of members or members disabled under section 14 at any one time would be so great a proportion of the whole, as to impede the transaction of business of the Board.

### **Confidentiality**

**17.** (1) A member or any person assisting the Board shall observe and preserve the confidentiality of all matters coming before the Board, and such

confidentiality shall subsist even after the termination of the member's or person's term of office or mandate.

(2) A member or person to whom confidential information is revealed through working with the Board shall not disclose that information to any person, unless he is required to do so under any law or for purposes of any judicial proceedings.

(3) A member or person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of six months, or to both.

### **Submission of particulars for declaration**

**18.** A member shall comply with the provisions of the Integrity Commission Ordinance, and shall submit all particulars required by the Ordinance to identify the member's assets, holdings, beneficial income and other relevant interests.

### **Validity of decisions**

**19.** The validity of any act or proceedings of the Board shall not be affected by any vacancy among its members, or by any defect in the appointment of a member, or by failure of a member to disclose his interest under section 15 or 16.

## **PART IV**

### **DIRECTOR AND STAFF OF AGENCY**

#### **Director of Agency**

**20.** (1) There shall be a Director of the Agency who shall be appointed by the Governor on the recommendation of the Board, upon such terms and conditions and for a period of not more than three years, subject to renewal, as may be determined by the Board and specified in the instrument of appointment.

(2) A person shall not be appointed as a Director—

(a) unless the person possesses such experience and training as may be determined by the Board, and the person demonstrates that he is competent to carry out the functions of the Agency; and

(b) if the person is a member of the House of Assembly.

(3) The Director shall be a full time officer and employee of the Agency, and shall render his services exclusively to the Agency.

(4) In the Director's absence or inability to fulfil his functions, the Deputy Director may discharge his functions, and in the absence of the Deputy Director, the Board may appoint a senior officer of the Agency to discharge the functions of the Director during the period of absence or disability.

#### **Functions of Director**

**21.** (1) Subject to such directions as may be given by the Board, the Director shall be responsible for —

- (a) the day to day management of the affairs of the Agency;
- (b) the discharge of the Board's functions and the exercise of its powers; and
- (c) the discharge of such functions and exercise of such powers as may be assigned to, or conferred on him by the Board, from time to time.

(2) The Director may delegate to the Deputy Director or to any senior officer of the Agency, any powers that he is authorised to exercise under this Ordinance.

### **Staff of Agency**

**22.** (1) The Board shall appoint the Deputy Director and senior officers of the Agency and the Director shall appoint such officers and employees as may be necessary for the proper discharge of the functions of the Agency.

(2) The terms and conditions of the staff of the Agency shall be determined by the Board.

(3) Notwithstanding subsection (2), the Agency shall not—

- (a) include a pension scheme in the terms and conditions of the staff; or
- (b) establish and maintain such schemes or make such other arrangements for the payment of pension benefits in respect of its officers and employees.

### **Secretary**

**23.** (1) The Board may appoint any member of staff of the Agency to perform the functions of the Secretary of the Board.

(2) The Secretary shall, in addition to any function that may be assigned to him by the Board or the Director, be responsible for—

- (a) taking the minutes of the meetings of the Board; and
- (b) keeping the records of all decisions of the Board.

(3) The Secretary shall attend all meetings of the Board, but shall not have a right to vote on any matter before the Board.

## **PART V**

### **FINANCIAL PROVISIONS**

### **Funds of Agency**

**24.** (1) The Funds of the Agency shall consist of—

- (a) such sums of money as may be appropriated by the House of Assembly for the purposes of the Agency; and



(b) such sums as may be paid out of the National Forfeiture Fund established under the Proceeds of Crime Ordinance.

(2) The Agency shall, at the end of the financial year, retain any sums of money as are remaining from the funds paid to the Agency from the National Forfeiture Fund.

(3) All funds appropriated to the Agency by the House of Assembly and remaining at the end of the financial year shall be paid to the Consolidated Fund.

### Financial year

25. The financial year of the Agency shall be a period of twelve months commencing from 1 April and ending on 31 March.

### Preparation of estimates

26. (1) The Agency shall, not less than three months prior to the commencement of each financial year, prepare and furnish to the Governor in respect of that financial year, estimates of—

(a) its expected recurrent and capital expenditure; and

(b) its expected revenue arising from any source.

(2) The Agency shall furnish the Governor with such further information and explanations in relation to the estimates, as the Governor may require.

### Accounts and audit

27. (1) The Agency shall keep proper accounts of all its transactions in accordance with the Public Finance Management Ordinance.

*Ord. 6 of 2012*

(2) The Agency shall have regard to and comply with its obligation to prepare and submit its annual budget and its financial statements for auditing within the time required under the Public Finance Management Ordinance and the National Audit Ordinance.

## PART VI

### DISCLOSURE OF INFORMATION BY AND TO THE AGENCY

### Obtaining information

28. (1) The Agency may, in the course of inquiring into a suspicious transaction relating to money laundering and money laundering offences, terrorist financing and terrorist finance offences or financial crime, serve notice in writing on any person, requiring the person to provide the Agency, upon such time as the Agency may require—

(a) with such information as is reasonably required for the purposes of the inquiry; or

(b) such other financial information as is required or permitted by any enactment for purposes of combating money laundering or financing of terrorism.

(2) A person who is required to provide information by notice served under subsection (1) shall provide such information to the Agency in the manner and time required by the Agency.

(3) A person who without reasonable excuse fails to comply with a requirement imposed under this section commits an offence and is liable—

(a) on summary conviction, to a fine of \$10,000 or to imprisonment for term of six months, or to both; or

(b) on conviction on indictment, to a fine of \$50, 000 or to imprisonment for a term of two years, or to both.

(4) Nothing in this section shall require disclosure of any information which is subject to legal professional privilege.

### **Permitted disclosure**

**29.** (1) Information obtained by the Agency in connection with the exercise of its functions may be disclosed by the Agency, if the disclosure is for the purpose of enabling or assisting—

(a) the Agency to discharge its functions under section 5(2)(b); or

(b) the Attorney General.

(2) Information disclosed by the Agency to any person or body under subsection (1) shall 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 Agency; or

(b) with the consent of the Agency.

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

(a) in relation to a particular disclosure; or

(b) in relation to a disclosure made in circumstances specified in the consent.

### **Restricted information**

**30.** (1) Subject to section 29, a person who under and for purposes of this Ordinance receives information relating to the business or other affairs of any person, whether directly or indirectly, shall not disclose such information without consent from the person from whom it was received.

(2) This section does not apply to information which—

(a) at the time of disclosure is or has already been made available to the public from other sources; or

(b) is in the form of a summary or collection of information framed to enable information relating to any particular person to be ascertained from it.

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

### **National and international cooperation**

**31.** The Agency may, in connection with the exercise of its functions, enter into an arrangement for cooperation with bodies or persons in the Islands, a foreign financial intelligence authority or foreign law enforcement authority, which it considers appropriate.

### **Disclosure of information to Agency**

**32.** (1) A person may disclose information to the Agency, if the disclosure is made for the discharge of the Agency's functions under this Ordinance.

(2) A disclosure made under subsection (1) shall not be considered to breach—

(a) any obligation of confidence owed by the person making the disclosure; or

(b) any other restriction of disclosure of information, however that restriction has been imposed.

(3) Nothing in this section shall require disclosure of any information which is subject to legal professional privilege.

## **PART VII**

### **MISCELLANEOUS**

### **Indemnity**

**33.** No matter or thing done or omitted to be done by a member, officer or employee of the Agency shall, if the matter or thing is done or omitted to be done in good faith and without negligence, in the course of the operations of the Agency, render a member, officer or employee of the Agency or any person acting by his direction, personally liable to an action, suit, prosecution, claim or demand.

### **Offences and penalties**

**34.** (1) A person commits an offence if that person—

(a) wilfully delays, threatens, assaults or obstructs an officer or employee of the Agency acting in the execution of his duties or powers under this Ordinance, or any other Ordinance;

(b) without reasonable excuse, refuses or neglects to answer any question, or to furnish any information, required, when required do so by an officer or employee of the Agency acting in the execution of his duties or powers under this Ordinance, or any other Ordinance;

- (c) knowingly makes any false declaration or false statement of a material nature in relation to any information provided under this Ordinance; or
- (d) in purported compliance with a requirement imposed on him under this Ordinance, provides information which he knows to be false or misleading in a material particular, or recklessly provides information which is false or misleading in a material particular.

(2) A person who commits an offence under subsection (1) is liable on summary conviction, to a fine of \$20,000 or to imprisonment for a term of one year, or to both.

(3) Where an offence is committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of any director, manager, or any person in control of the body corporate, or any officer of a body corporate, the director, manager, person in control, or officer of the body corporate, or any person who was purporting to act in that capacity; or
- (b) to be attributable to the failure of any person listed in paragraph (a) to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his powers and all the circumstances,

the persons listed as aforesaid, as well as the body corporate commit that offence, and shall be liable to be proceeded against and punished accordingly.

(4) For the purposes of this section, a person shall be deemed to be a director of a body corporate if he occupies in relation to that body corporate, the position of a manager, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the body corporate or any of them, act.

## **Regulations**

**35.** The Governor may make regulations prescribing anything which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Ordinance, or to give force and effect to its provisions.