

Financial Transactions Reporting Act

Govt imposes obligations of monitoring and reporting certain financial transactions.

- by Aruna Samarajewa

The Government recently enacted the Financial Transactions Reporting Act No. 6 of 2006 with the object of collecting data relating to suspicious financial transactions to facilitate the prevention, detection, investigation and prosecution of offences of Money Laundering and the financing of terrorism. This Act also requires certain Institutions to undertake due diligence measures to combat money laundering and the financing of terrorism.

The Financial Intelligence Unit (FIU), which will be charged with the administration of the provisions of this Act has also been established.

This Act imposes certain obligations on what the Act calls "Institutions", which is defined to mean persons carrying on "Finance Business" or "Designated Non-Finance Business".

Finance Businesses include, banks, finance companies and persons involved in lending and consumer credit, mortgage credit, factoring, finance leasing (other than transactions relating to consumer products), transfer of money or value, money changers, managing means of payment, providing guarantees, trading in money market instruments, participation in security issues and such the business as may be prescribed by the Minister.

Designated Non-Finance Businesses include persons involved in portfolio management, money management, custody services, underwriting and placement of insurance, casinos / gambling houses and lotteries, real estate agents, dealers in precious metals, lawyers, accountants and independent professionals involved in real estate transactions, managing client money or arranging finance, managing companies and buying and selling of business entities. It is interesting that this definition has been cast as wide as possible and even includes a trust or company service provider which as a business is involved in formation or management of legal persons, acting as directors / secretaries of companies providing the registered office or a business address for the company, acting as a trustee, acting or arranging persons to act as Nominee Shareholders, as well as Offshore Units.

These Institutions have been imposed with a myriad of duties and obligations. Under this Act, an Institution cannot open accounts where the holder of such account cannot be identified and includes any anonymous account or any account identified by number only or any account which to the knowledge of the Institution is being operated in a fictitious or false name.

They are further obliged to verify customer identification where, (a) there is to be a continuing business relationship or a transaction with a customer; (b) it detects an electronic funds transfer which is not permitted; (c) it entertains a suspicion relating to the commission of an unlawful activity and (d) it entertains doubts about the customer identification or documents relating to same which it had previously obtained. These obligations have however been excluded in situations where there is a regular business relationship with the customer and that there is no reason to suspect that the transaction is suspicious.

Under this Act, Institutions cannot proceed to execute any transaction in instances where it cannot adequately identify the identity of the person involved and must report such transaction to the FIU.

Another obligation imposed on the Institutions is to conduct ongoing due diligence on the business relationship with its customers and ongoing scrutiny to ensure that the business is being conducted in accordance with the institutions knowledge of the customer, the customer's business and its risk profile including the source of funds

One of the most important and perhaps most stringent obligation is that an Institution must report transactions in cash or by way of electronic funds transfer in excess of the specified limit (The limit has been specified as Rs 500,000/- or its equivalent in foreign currency in Gazette Notification 1437/24 dated 23rd March 2006). This obligation will mostly apply to banks, finance companies and other institutions who will now be required to continuously monitor and report this type of transaction.

The other obligations are to report transactions which an Institution has reasonable grounds to suspect may be related to any "unlawful activity", money laundering or terrorist activity; any property in the possession of such Institution which it reasonably suspects to have been derived from terrorist activity or relating to a terrorist organization; not divulge to any person that a report has been submitted to the FIU and establish procedures and maintain systems for customer identification, record keeping, monitoring, educating employees, money laundering and financing of terrorism and reporting requirements.

If an Institution fails to conform these above requirements, a fine of up to Rs. 1,000,000.00 may be imposed. This penalty could even be levied from a Director / General Manager / Secretary or other similar officer of the Company.

There are also several other offences under this Act such as if a false or a misleading report is made shall be liable to a fine of up to Rs. 100,000/- and / or imprisonment of up to 6 months; if any act is done to prejudice an investigation or for the purpose of gain to oneself or loss to another, a fine of up to Rs. 500,000/- and / or imprisonment not exceeding 2 years; if there is wilful obstruction or failure to co-operate with the FIU, a fine of Rs. 500,000/- and / or imprisonment not exceeding 2 years; if there is a forgery concealment or anything done to effect the authenticity or integrity of any document relating to money laundering or terrorist activity, a fine of Rs. 100,000/- and / or imprisonment not exceeding 1 year and any person who opens an account in a fictitious name, shall be liable a fine of Rs. 100,000/- and / or imprisonment not exceeding 1 year

Hence, this Act has now effectively ensured that the institutions involved and its directors, managers, secretaries and similar officers strictly monitor all its business activities. In fact, the Act also mandates that every Institution is required to appoint a compliance officer who shall be responsible for ensuring the Institution's compliance with the requirements of this Act. Interestingly, the Act also states that Institutions are required to establish and maintain procedures and systems to implement the customer identification requirements, record keeping and retention of data, implement the process of monitoring, make its officers and employees aware of the laws relating to money laundering and financing of terrorism and screen all person before hiring them as employees.

It seems that this Act is bound to have a massive impact on the institutions governed by this Act and will be required to implement a major overhaul of its operating systems and make fundamental changes to the manner in which it conducts its business. It is easily one of the most significant pieces of legislation that relate to the banking and financial sector.