



GOVERNMENT OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS
Commissioner | Natalia I. Zequeira Díaz, Esq. | nataliaz@ocif.pr.gov

CIRCULAR LETTER NUMBER CFI-CC-2021-07

TO: All International Banking Entities (“IBES”) and all International Financial Entities (“IFES”) organized in Puerto Rico

From: Natalia Zequeira-Díaz, Esq., Commissioner of Financial Institutions

Date: November 3, 2021

RE: PUBLIC POLICY CRITERIA CONSIDERED BY THE OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS IN IMPOSING SANCTIONS AND PENALTIES FOR VIOLATIONS OF THE DUTY of IBES and IFES TO FILE SARS

I. AUTHORITY

This circular letter is issued pursuant to the authority conferred to the Commissioner of Financial Institutions by Act No. 4 of October 11, 1985, as amended, known as the “Office of the Commissioner of Financial Institutions Act” (hereinafter, “Act No. 4”), Act No. 52 of 1989, as amended, known as the “International Banking Act” (“Act No. 52”) and Act No. 273 of 2012, as amended, known as the “International Financial Center Regulatory Act” (“Act No. 273-2012”).

II. LEGAL BASE

Act No. 4 entrusts the Commissioner of Financial Institutions with the main responsibility of controlling and supervising the financial institutions that operate or do business in Puerto Rico.

Article 10 of Act No. 4, in pertinent part, provides as follows:

§ 2010. Commissioner—Faculties

(a) The Commissioner, in addition to the powers and faculties transferred hereby, shall have the power and authority to:

- (1) ...
- (2) ..., approve ... such... orders, resolutions, and determinations needed to comply with this act. ...

In addition to Act No. 4, Act No. 52 authorizes the Commissioner, respectively, to take actions and grant remedies as are necessary to enforce the provisions of Act No. 52 or the regulations thereunder¹.

Similarly, Act No. 273-2012 authorizes the Commissioner to carry out such other activities or establish such other procedures that are incidental to the performance of his/her duties under Act No. 273-2012².

III. PURPOSE

The purpose of this Circular Letter is to remind IBES and IFES of their legal obligation to file suspicious activities reports ("SARs") and undertake all reasonable measures to comply with statutory requirements for the prevention of terrorist financing, money laundering and tax evasion.

Our analysis of the IBES and IFES confirm that the culture of compliance in a financial institution is critical to having an effective compliance program that enables timely detection and prevention of money laundering and other financial crimes. Although the deficiencies identified by OCIF may vary from one entity to another, one common deficiency that OCIF has been able to identify is the failure of filing SARs when warranted. The absence of timely filing of SARs is a violation of the provisions of Act No. 52, Act No. 273-2012, the Bank Secrecy Act, and of the US Patriot Act.

THEREFORE, THIS CIRCULAR LETTER ALSO INTENDS TO REMIND IBES AND IFES OF THE PUBLIC POLICY CRITERIA USED BY THE COMMISSIONER OF FINANCIAL INSTITUTIONS WHEN CONSIDERING THE PENALTIES AND SANCTIONS TO BE IMPOSED FOR SARs-RELATED VIOLATIONS.

IV. DUTIES OF IBES AND IFES TO FILE SARs

Section 14 of Act No. 52, codified at 7 L.P.R.A §232j-1, provides as follows in connection with the duty of IBES to file SARs:

§ 232j-1. Responsibilities of the holders of a license to operate an international banking entity

Every holder of an international banking entity license shall:

- (a) Adopt written business policies and procedures to ensure that the international banking entity complies with the applicable state and federal laws, including this Act, the Bank Secrecy Act, and the USA Patriot Act.
- (b) Faithfully comply with the applicable state and federal laws and the regulations applicable to the international banking entity, including §§ 232 et seq. of this title, the Bank Secrecy Act, and the USA Patriot Act.
- (c) **File currency transaction or suspicious activity reports required by the Bank Secrecy Act and the USA Patriot Act, when necessary.**

¹ Section 3 of Act No. 52, codified at 7 L.P.R.A. §232a.

² Section 3 of Act No. 273-2012, codified at 7 L.P.R.A §3082.

(d) Follow the practice rules and procedures that are necessary in the business to meet the requirements of OFAC [Office of Foreign Asset Control], as applicable. [Emphasis added].

In turn, Section 8(f) of Act No. 273-2012 provides the corresponding duties of IFES as follows:

(f) Every holder of an international financial institution license issued in accordance with the provisions of this chapter shall:

(1) Adopt the business policies and procedures to ensure that the international financial institution complies with the applicable state and federal laws, including this chapter, the Bank Secrecy Act, and the USA Patriot Act;

(2) faithfully comply with the applicable state and federal laws and the regulations applicable to the international financial institution, including this chapter, the Bank Secrecy Act, and the USA Patriot Act;

(3) **file currency transaction or suspicious activity reports required by the Bank Secrecy Act and the USA Patriot Act, when necessary**, and

(4) follow the practice rules and procedures that are necessary in the business to meet the requirements of OFAC, as applicable. [Emphasis added].

V. PENALTIES PROVIDED FOR VIOLATIONS OF SECTION 14 OF ACT NO. 52 AND SECTION 8(F) OF ACT NO. 273-2012

In connection with IBES, Section 18 of Act No. 52, codified at 7 L.P.R.A §232p, provides as follows:

§ 232p. Penalties

(a) If any director, official or individual acting in a similar capacity of an international banking entity or of a person of which the international banking entity is a unit, **violates, or voluntarily or negligently permits any director officer, agent, or employee of the international banking entity or of the person of which the international banking entity is a unit, to violate** [this act...], the regulations of the Commissioner, or any provision of the certificate of incorporation, partnership agreement or other written document establishing the international banking entity, the Commissioner shall schedule and summon the interested parties to an administrative hearing pursuant to the regulations provided in [...section 21] of this [act]. Once the hearing is held and after the Commissioner determines that a provision mentioned in this subsection has been violated, he shall take the corresponding action, including the suspension or dismissal of such director, officer or individual.

(b) ...

(c) ...

(d) Any director, official, or employee of an international banking entity or of the person of which the international banking entity is a unit, **who voluntarily misrepresents** the financial condition of an international banking entity or **about**

any transaction to be carried out by, or carried out by the international banking entity, or who declines to provide information legally requested by the Commissioner, shall commit a felony and, if convicted, shall be punished with imprisonment for not less than five (5) years nor more than ten (10) years, or with a fine of not less than eight thousand dollars (\$8,000) nor more than seventeen thousand dollars (\$17,000), or with both penalties at the discretion of the court.
(e) The Commissioner is hereby authorized to:

(1) **Impose and collect administrative fines of not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000) for each violation** of the provisions of [this act ...] or of the rules and regulations that may be promulgated thereunder.

(2) Order restitution or refund of payments received in violation of the provisions of this act ...] or any rules or regulations that may be promulgated thereunder or any other remedy that he/she may deem necessary to achieve the purposes of this act ...].

(3) **Impose and collect administrative fines, which shall not be less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000), for each day the international banking entity fails to meet the requirements or carry out the orders of the Commissioner.** [Emphasis added].

Insofar as IFES are concerned, Section 18 of Act 273-2012, codified at 7 L.P.R.A. § 3097, provides as follows:

§ 3097. Penalties

(a) If any director, official, or individual acting in a similar capacity of an international financial institution or of a person of which the international financial institution is a unit, **violates, or voluntarily or negligently allows any director officer, agent, or employee of the international financial institution or of the person of which the international financial institution is a unit, to violate** the provisions of this [...act], the regulations of the Commissioner, or any provision of the certificate of incorporation, partnership agreement or other written document establishing the international financial institution, the Commissioner shall schedule and summon the interested parties to an administrative hearing pursuant to the regulations provided in [... section 20 of this act]. Once the hearing is held and after the Commissioner determines that a provision mentioned in this subsection has been violated, he/she shall take the corresponding action, including the suspension or dismissal of such director, officer, or individual.

(b)...

(c) ...

(d) Any director, official, or employee of an international financial institution or of the person of which the international financial institution is a unit, **who**

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voluntarily misrepresents the financial condition of an international financial institution or **about any transaction to be carried out by, or carried out by the international financial institution**, or who declines to provide information legally requested by the Commissioner, shall commit a felony and, upon conviction, shall be punished by imprisonment for not less than five (5) years nor more than ten (10) years, or by a fine of not less than eight thousand dollars (\$8,000) nor more than seventeen thousand dollars (\$17,000), or by both penalties at the discretion of the court.

(e) The aforementioned provisions in this section shall not be construed as to limit the power of the Commissioner to impose administrative fines for violations of the provisions of this chapter or of the regulations of the Commissioner. [Emphasis added].

In addition to the above-cited statutory penalty provisions, Article 13 of Regulation 5653, enacted under Act No. 52, which is applicable to IBES and IFES³, provides, as is here pertinent, as follows:

ARTICLE 13. REMEDIES AND PENALTIES

- 1) ...
- 2) Penalties

Any violation of the Act or this Regulation shall be punished with the penalties established by the Act, and if the Act does not provide a penalty, the Commissioner may impose the administrative fine which he deems appropriate, which shall not be less than five hundred dollars (U.S. \$500) and no more than five thousand dollars (U.S. \$5,000) per violation. [Emphasis added].

VI. CRITERIA FOR IMPOSITION OF PENALTIES

Defending the people against its enemies is the first and fundamental commitment of both the Federal and State Governments, including the Government of Puerto Rico. Financial crimes involving terrorism, money laundering and tax evasion are threats to our national security. To defend against the types of threats to our national security, the Office of the Commissioner of Financial Institutions (the "OCFI") must make use of every tool provided by the Bank Secrecy Act, Anti-Money Laundering regulations and OFAC guidelines, all of which have been incorporated in Act No. 52 and Act No. 273-2012.

The duty to file SARs is a matter of national security and the OCFI will determine the sanctions and penalties to be imposed for SARS-related violations taking into consideration the above-mentioned national security concerns.

Under Act No. 52 and Act No. 273-2012, IBES and IFES are required to file SARs when they detect certain known or suspected criminal violations or suspicious transactions.

³ Article 27 of Act No. 273-2012 provides that regulations enacted under Act No. 52 shall apply to the organization and governance of IFES until such a time as regulations are enacted under Act No. 273-2012.

Suspicious activity reporting is the cornerstone of the BSA reporting system and is critical to the United States' ability to utilize financial information to combat money laundering, terrorist financing, and other illicit financial activity.

Given all of the above, when determining the sanctions and penalties to be imposed for violations of Section 14 of Act No. 52 and Section 8(f) of Act No. 273-2012, cited above, the OCFI will consider that the omission to file SARs in those cases in which it is necessary, constitute serious violations of Act No. 52 and Act No. 273-2012 and a threat to the national security of the United States of America and Puerto Rico.

VII. EFFECTIVENESS

The provisions of this Circular Charter shall begin to govern immediately.

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.