

Insurers: Don't Leave Us All 'Half Pregnant'

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By Neil Hartnell, Tribune Business Editor

The Attorney General yesterday confirmed general insurers “are out” of anti-financial crime legislation, as the industry urged: “We can't be half pregnant.”

Carl Bethel QC, in a What's App exchange with Tribune Business, confirmed that general, or property and casualty insurers, are not included in the definition of ‘financial institutions’ in the Financial Transactions Reporting Bill that was passed yesterday by the House of Assembly.

Yet Mr Bethel, in forwarding a copy of the recommendations issued for non-life insurers by the Financial Action Task Force (FATF), the global standard-setting body for anti-money laundering and counter terror financing regulations, drew attention to the insurance industry's ongoing obligations to report suspicious financial activity - regardless of whether they were included in the Bill or not.

The Attorney General, in particular, referenced sections seven and eight of the FATF guidance. These called on non-life insurers, including the property and casualty sector, to file suspicious transactions reports (STRs) on questionable dealings “in accordance with local regulatory requirements”.

And, if the policy premium was “unusually large” and there were signs of money laundering/terrorism financing activities by a customer, property and casualty insurers are required to perform “ongoing monitoring” and customer due diligence.

The FATF guidance also outlined “a limited number of scenarios” in which general insurance could be abused for such purposes, such as the overpayment of a large premium and demand for its return; intentionally-caused claims; and inflated and fraudulent claims.

Asked whether Bahamian property casualty insurers were ‘in or out’ when it came to being included in the Bill's list of ‘financial institutions’, Mr Bethel replied: “They are out. But as the recommendations plainly show, they are not immune from anti-money laundering and counter terror financing obligations where they find a suspicious transaction.

“It [the FATF recommendations] shows some kind of obligation to be aware of issues and to act.” The Attorney General then suggested that the Bahamas Insurance Association (BIA) and its chairman, Emmanuel Komolafe, possessed the FATF document but had not mentioned its contents.

Mr Bethel then reiterated his position as outlined to Tribune Business on Wednesday, adding that it was “too late” to now change the Financial Transactions Reporting Bill but he would seek to give the general insurance industry “protection”.

“The point is that it is too late at this stage to make changes to the Bill,” he said. “But I have it being reviewed. We will see what can be done and when to give them some protection.”

Mr Bethel was speaking after controversy erupted over an earlier reply by his Office to the BIA’s request for clarity on purported amendments to the Financial Transactions Reporting Bill that seemingly removed property and casualty insurers from the list of ‘financial institutions’.

The BIA and its members had previously argued that the sector’s inclusion represented ‘regulatory overreach’, as this was not required by the FATF, and would unnecessarily increase cost and ‘red tape’ by requiring Know Your Customer (KYC) due diligence to be undertaken on all customers.

Mr Bethel, in a late February 28 interview with Tribune Business, indicated that the Government had acceded to the insurance industry’s wishes and removed property and casualty insurance from the ‘financial institutions’ list.

However, the early April note sent to the BIA by the Attorney General’s Office appeared to exempt property and casualty insurance from some, but not all, KYC and customer due diligence requirements under the Bill.

Tribune Business was yesterday told that this position, and Mr Bethel’s comments to Tribune Business on Wednesday, had left the Bahamian insurance industry in “a state of shock” and unable to plan due to the uncertainty surrounding the property and casualty sector.

“Persons are lost, confused and wondering what is happening,” one source told Tribune Business. This was confirmed by Anton Saunders, RoyalStar Assurance’s managing director, who told Tribune Business that the move to exempt general insurers from some - but not all - provisions in the Bill had left the sector “half pregnant”.

“It is becoming confusing, and the message the insurance industry is getting is becoming confusing,” he told Tribune Business. “We’re either in [the Bill] or out. We can’t have a situation where it’s left to the interpretation of someone as to whether we’re in or not.

“We need clarity on the situation. The insurance industry has already gone through another situation where we didn’t have clarity on the law and regulations. We have seen this play out with VAT, where we didn’t have clarity in what we’re doing, and we’re seeing this coming with another Bill.”

Including property and casualty insurance as ‘financial institutions’ in the Bill would force the sector “to change our business model”, Mr Saunders admitted, but it would at least give the industry certainty.

“We’re not asking for any favours from government or anyone,” he said. “We just want to know if we’re in or out. You cannot continue to run a business in a country where you don’t have clarity on what the regulations are that control your business. That goes for any industry.

“We can’t be half pregnant. Everyone, just please let us know: We’re in or we’re out. We can’t be half-way. The uncertainty means you don’t know whether to go left or right. You don’t know how to plan.

‘You’re in a worse position with uncertainty. Right now, your plans are on hold. They [the Government] have to understand people are running real businesses, and impacting real lives on this side. We have to know what we’re doing to protect the business and its customers. These are real life decisions we have to make based on regulations.’”

An April 16, 2018, letter from the BIA to Mr Bethel notes that, based on his Office’s response, property and casualty insurers will only be required to undertake Know Your Customer (KYC) verification, customer due diligence and file suspicious transactions reports (STRs).

Industry sources, speaking to Tribune Business on condition of anonymity, said this created a messy half-way house that threatened to expose property and casualty insurers to even greater complexity and problems than before.

“What happens by limiting these sectors is you create a bigger problem,” one source said. They explained that the general insurance sector, for instance, was seemingly excluded from provisions that protect the identity of persons involved in STRs and those submitting them; exposed to liability for breaching customer confidentiality; and removed from safeguards designed to prevent the ‘tipping off’ of suspects.

The source also suggested it was illogical to exempt general insurers from the requirements to conduct risk assessments and appoint compliance officers, for instance, given that there was “no way of complying” with the mandated provisions other than to follow these procedures.

These issues were raised in the BIA’s April 16 letter, signed by co-ordinator Rhonda Chipman-Johnson, which warned that the changes flagged by the Attorney General’s Office earlier this month left general insurers “in a worse off position” than other industries subjected to the Bill.

“It is apparent that the selective application of certain sections of the Financial Transactions Reporting Bill to general insurers has created more complications and problems for the industry, albeit these may have been unintended by the Attorney General’s Office,” Ms Chipman-Johnson wrote.

“These complications have created inconsistencies within the draft legislation which appear to put general insurance companies in a worse off position than other financial institutions subject to the Financial Transactions Reporting Bill.”