Regulations of Anguilla

Gazette Dated: , 2022
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PROCEEDS OF CRIME ACT, R.S.A. C. P98

ANTI-MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT) CODE, 2022
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Code made by the Financial Services Commission after consultation with the Governor under section 169 of the Proceeds of Crime Act, R.S.A. c. P98.

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ANTI-MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT) CODE, 2022

Interpretation

1.   In this Part "Code" means the Anti-Money Laundering and Terrorist Financing Code.

Amendment of section 1

2.   The Code is amended in section 1 by inserting the following new definition after the definition of "Code"—

""constitution", in relation to a legal entity, means the document or documents that constitute or define the constitution or formation of the legal entity and which set out the powers that regulate and bind the legal entity;".

Amendment of section 3

3.   The Code is amended in section 3—

(a)   in subsection (1)—

(i)   in paragraph (b), by inserting the phrase "and mitigate" after the phrase "best manage",

(ii)   in paragraph (c), by deleting the phrase "AML/CFT policies, systems and controls" and substituting the phrase "AML/CFT policies, procedures, systems and controls";

(b)   by deleting subsection (2) and substituting the following subsections—

"(2)   The risk assessment carried out by a service provider under subsection (1) shall—

(a)   take into account any relevant warnings, information, advice or guidance issued by the Unit or the Commission relevant to the service provider's risk assessment;

(b)   consider all relevant risk factors, taking particular account of risk factors relating to—

(i)   its customers,

(ii)   the countries or geographic areas in which it operates,

(iii)   its products and services,

(iv)   its transactions, and

(v)   its delivery channels, and

(c)   take into account—

(i)   the service provider's organisational structure, including the extent to which it outsources activities, and

(ii)   the size, nature and complexity of its business.

(2a)   A service provider must, on the request of the supervisory authority, provide the supervisory authority with the risk assessment that it has prepared under subsection (1) and the information on which that risk assessment was based."; and

(c) in subsection (3), by inserting "regularly" after words "A service provider shall".

Amendment of section 5

4.   Section 5 is amended by inserting the following new subsections after subsection (2) –

"(2a) A service provider shall—

(a)   ensure that the policies, procedures, systems and controls established under section 16 of the AML/CFT Regulations are regularly reviewed and updated; and

(b)   maintain a written record of—

(i)   any changes to the policies, procedures, systems and controls made as a result of the review and update required by paragraph (a), and

(ii)   the steps taken to communicate those policies, procedures, systems and controls, or any changes to them, to relevant persons within the service provider's business.

(2b)   The policies, procedures, systems and controls must be—

(a)   proportionate with regard to the size and nature of the service provider's business, and

(b)   approved by its board or senior management.

(2c)   The policies, procedures, systems and controls must include reliance on introducers and intermediaries.

Amendment of section 10

5.   The Code is amended in section 10—

(a) by deleting subsection (1); and

(b) in subsection (2), by "deleting "Without limiting subsection (1), a service provider" and substituting "A service provider".

Amendment of section 15

6.   The Code is amended in section 15—

(a) in subsection (2)—

(i) by inserting the following new paragraph after paragraph (b)—

"(ba) the legal form of the legal entity, the law under which it is governed and the powers that regulate and bind it;",

(ii) by deleting paragraph (h) and substituting the following—

     "(h)   the names of the directors of the legal entity and of the senior persons responsible for the management and operation of the legal entity;",

    (iii)   in paragraph (j), by deleting the phrase "significant owners" and substituting the phrase "beneficial owners";

  (b) by inserting the following new subsection after subsection (2)—

    "(2a)   A service provider must obtain sufficient information under this section to enable it to understand the ownership and control structure of the legal entity."; and

  (c) by deleting subsection (6).

Amendment of section 16

7.   The Code is amended by deleting subsections (2) and (3) and substituting the following subsection—

    "(2)   A service provider shall, using evidence from at least one independent source, verify—

        (a)   the name of the legal entity;

        (b)   the company number, registration number or other official identifying number of the legal entity;

        (c)   the date and country of its incorporation, registration or formation and the law under which it is governed;

        (d)   its constitution;

        (e)   the address of its registered office or, if it does not have a registered office its head office and, if different, its principal place of business;

        (f)   to the extent not verified under paragraphs (a) to (d), proof of the legal entity's existence; and

        (g)   to the extent not verified under paragraph (d), evidence of the powers that regulate and bind the legal entity.".

Amendment of section 17

8.   The Code is amended in section 17—

  (a) by deleting subsection (1) and substituting the following –

    "(1)   Where required by the AML/CFT Regulations to verify the identity of a legal entity, a service provider must—

        (a)   verify the names of the directors of the legal entity;

        (b)   verify the names of the senior persons responsible for the management and operation of the legal entity; and

        (c)   if section 4(1A) and (1B) of the AML/CFT Regulations apply, take reasonable measures to verify the identity of the individual who holds the position of senior managing official in the legal entity."; and

    (b)   in subsection (3), by deleting "and each beneficial owner".

Amendment of section 18

9.   The Code is amended in section 18—

(a) in the marginal note, by deleting "and trustees";

(b) in subsection (1)(a), by deleting subparagraphs (iv) to (ix) and substituting the following—

"(iv) the legal form of the trust, including the type of trust,

(v) the law under which the trust is governed and the powers that regulate and bind it,

(vi) identification information on each beneficial owner of the trust,

(vii) the names of any persons, other than the trustees, that have a senior management position in relation to the trust or the trust property, and

(viii) the mailing address of the trustees; and";

(c) by inserting the following new subsections after subsection (1)—

"(1a)   A service provider must obtain sufficient information under this section to enable it to understand the nature of trust's business and the ownership and control structure of the trust.

(1b)   Where a service provider determines that a trust that it is required to identify presents a higher level of risk, the service provider shall obtain such additional identification information with respect to the trust as it considers appropriate.".

(d) by deleting subsection (2).

Amendment of section 19

10.   The Code is amended in section 19—

(a) in the marginal note, by deleting "trustees" and substituting "beneficial owners";

(b) by deleting subsection (1) and substituting the following subsections—

"(1) Where a service provider is required by the AML/CFT Regulations to verify the identity of a trust, it shall—

(a)   verify—

(i)   the name and date of establishment of the trust,

(ii)   the legal form of the trust and the law under which the trust is governed,

(iii)   the trust deed and any other document that regulates and binds the operation of the trust,

(iv)   the appointment of each trustee and the nature of the trustees' duties;

(v)   the names of any persons, other than the trustees, that have a senior management position in relation to the trust or the trust property,

(vi)   the mailing address for the trustees,

(vii) to the extent not verified under subparagraphs (i) to (vi), proof of the trust's existence, and

(viii) to the extent not verified under subparagraph (iii), evidence of the powers that regulate and bind the legal entity; and

(b)   take reasonable measures to verify the identity of each beneficial owner of the trust.

(1a)   Where a service provider determines that a trust that it is required to identify presents a higher level of risk, the service provider shall verify such other components of the trusts identity as it considers appropriate.".

Amendment of section 20

11.   The Code is amended in section 20—

(a)   in the marginal note, insert "and similar legal arrangements";

(b)   in subsection (1)—

(i) by inserting the following paragraph after paragraph (b)—

"(ba)   the type of foundation;

(bb)   the law under which the foundation is governed and the powers that regulate and bind it;",

(ii) by deleting paragraphs (i) to (l) and substituting the following paragraphs—

"(i)   identification information on each beneficial owner of the foundation; and

(j)   the names of any persons, other than the Foundation Council members, that have a senior management position in relation to the foundation or its operation or whose approval is required for any decision;";

(c)   by deleting subsection (3);

(d)   by inserting the following new subsections after subsection (4)—

"(5)   Notwithstanding subsection (1) the service provider may require any other identification information that the service provider deems necessary to aid in identifying the foundation.

(6)   A service provider must obtain sufficient information under this section to enable it to understand the nature of the foundation's business and the ownership and control structure of the foundation.

(7)   A service provider shall apply this section to the identification of a legal arrangement that is similar to a foundation, with such modifications as are necessary and appropriate.".

Amendment of section 21

12.   The Code is amended in section 21—

(a) in the marginal note, insert "and similar legal arrangements";

(b) by deleting subsections (1), (2) and (3) and substituting the following—

"(1)   A service provider shall, using evidence from at least one independent source, verify—

(a)   the name and date of establishment, registration, formation or incorporation of the foundation;

(b)   the legal form of the foundation and the law under which the foundation is governed;

(c)   the constitution of the foundation and any other document that regulates and binds the operation of the foundation;

(d)   the names of the Foundation Council members;

(e)   the names of any persons, other than the Foundation Council members that have a senior management position in relation to the foundation or its operation or whose approval is required for any decision;

(f)   the registered address, or equivalent, or if the foundation does not have a registered address, the address of the head office and, if different, its principal place of business;

(g)   to the extent not verified under paragraphs (a) to (c), proof of the foundation's existence; and

(h)   to the extent not verified under paragraph (c), evidence of the powers that regulate and bind the legal entity.

(2)   A service provider shall take reasonable measures to verify the identity of each beneficial owner of the foundation;" and

(c) in subsection (6) by deleting the phrase "or section 22";

(d) by inserting the following new subsection after subsection (6)—

"(7)   A service provider shall apply this section to the verification of identification of a legal arrangement that is similar to a foundation, with such modifications as are necessary and appropriate.".

Repeal of section 22

13.   The Code is amended by repealing section 22.

Insertion of new section 22A

14.   The Code is amended by inserting the following new section after section 22—

"**Identification and verification of any other legal arrangement**

22A.   (1)   Where a service provider is required by the AML/CFT Regulations or this Code to identify and verify a legal arrangement other than a trust or a foundation (or a legal arrangement similar to a foundation), the service provider shall—

(a)   determine the beneficial owners of the legal arrangement in accordance with section 12 of the Commercial Registry and Beneficial Ownership Registration System Act; and

(b)   apply sections 18 to 21, with such modifications as are appropriate.

(2)   In applying the definition of "beneficial owner" in the Commercial Registry and Beneficial Ownership Registration Act to this Code, "settlor" includes a person who, as a settlor, established the trust and any person who has, at any time, subsequently settled assets into the trust.".

Amendment of section 26

15.   The Code is amended in section 26(1) by deleting paragraph (a) and substituting the following—

"(a) satisfy itself that the intermediary or introducer is a regulated person or a foreign regulated person that is—

(i) subject to requirements in relation to customer due diligence and record keeping which are equivalent to those set out in the FATF Recommendations, and

(ii) effectively supervised for compliance with those requirements.".

Amendment of section 27

16.   The Code is amended in section 27—

(a) in subsection (1)(a), by inserting after the phrase "higher risk customers" the phrase ", including politically exposed persons and close family and associates of politically exposed persons"; and

(b) in subsection (2)(d)(i), by inserting "or with countries against which the FATF calls for countermeasures" after "FATF Recommendations".

Amendment of section 28

17.   The Code is amended in section 28(1)(e), by inserting the phrase ", and in any event, within 24 hours," after the phrase "as soon as is reasonably practicable".

Amendment of section 43

18.   The Code is amended in section 43—

(a) by inserting the following new definition in its appropriate alphabetical order—

"full beneficiary information", with respect to a payee means—

(a)   the payee's name;

       (b)   the payee's account number or, where the account number is not available, a unique identifier which allows the transaction to be traced back to the payee;";

  (b) by deleting the definition of "full originator information" and substituting the following—

     "full originator information", with respect to a payer means—

       (a)   the payer's name;

       (b)   the payer's account number or, where the account number is not available, a unique identifier which allows the transaction to be traced back to the payer; and

       (c)   one of the following—

          (i)   the payer's address,

          (ii)   the number of a government-issued document evidencing the payer's identity,

          (iii)   the payer's customer identification number,

          (iv)   the payer's date and place of birth;"; and

  (c) in the definition of "intermediate payment service provider" by deleting the word "intermediate" and substituting the word "intermediary".

Amendment of section 44

19.   The Code is amended in section 44 by deleting the phrase "a payment service provider that is established in Anguilla" and substituting the phrase "a payment service provider that is a financial business that carries on business in or from within Anguilla".

Amendment of section 45

20.   The Code is amended in section 45—

  (a) in subsection (2), by deleting the phrase "to effect the transfer" and substituting the phrase "to effect a transfer of funds";

  (b) by deleting subsections (3) and (4); and

  (c) by deleting subsection (5) and substituting the following—

     "(5)   A transfer of funds made by mobile telephone or any other digital or information technology device is exempt from this Part if—

       (a)   the transfer is pre-paid and does not exceed $300; or

       (b)   each of the following applies—

          (i)   the payee has an agreement with the payment service provider permitting payment for the provision of goods and services;

(ii)   a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds; and

(iii)   the payment service provider of the payee is a licensee.".

Repeal and replacement of section 46

21.   The Code is amended by repealing section 46 and replacing it with the following—

"**Payment service provider of payer**

46.   (1)   Subject to section 45, the payment service provider of a payer shall ensure that every transfer of funds is accompanied by the full originator payer information and the full beneficiary information.

(2)   Subsection (1) does not apply in the case of a batch file transfer from a single payer, where some or all of the payment service providers of the payees are situated outside Anguilla, if—

(a)   the batch file contains—

(i)   the full originator information with respect to the payer, and

(ii)   full beneficiary information in relation to the payee that is sufficient to enable traceability within the payee's country; and

(b)   each of the individual transfers carries—

(i)   the payer's account number or a unique identifier which allows the transaction to be traced back to the payer, and

(ii)   the full beneficiary information in relation to the payee.

(3)   The payment service provider of the payer shall, before transferring any funds, verify the full originator information and full beneficiary information on the basis of documents, data or information obtained from a reliable and independent source.

(4)   In the case of a transfer from an account, verification referred to in subsection (3) with respect to the full originator information may be deemed to have taken place if—

(a)   the account is held at a domestic bank or at a company that holds an offshore banking licence issued under the Trust Companies and Offshore Banking Act;

(b)   the payer's identity has been verified in accordance with the applicable requirements of sections 16 to 22A of this Code; and

(c)   information and documents relating to the verification of the payer have been kept and retained in accordance with section 17 of the AML/CFT Regulations.

(5)   In the case of a transfer of funds not made from an account, the full originator information on the payer shall be deemed to have been verified by a payment service provider of the payer if—

(a)   the transfer consists of a transaction of an amount not exceeding $2,500;

(b)   the transfer is not a transaction that is carried out in several operations that appear to be linked and that together comprise an amount exceeding $2,500; and

(c)   the payment service provider of the payer does not suspect that the payer is engaged in money laundering, terrorist financing or other financial crime.

(6)   The payment service provider of the payer shall keep records of full originator information on the payer and full beneficiary information that accompanies the transfer of funds for a period of at least 5 years.

(7)   Where the payment service provider of the payer and the payment service provider of the payee are both situated in Anguilla, a transfer of funds need only be accompanied by—

(a)   the account number of the payee; or

(b)   a unique identifier that allows the transaction to be traced back to the payer, where the payer does not have an account number.

(8)   Where subsection (7) applies, the payment service provider of the payer shall, upon request from the payment service provider of the payee, make available to the payment service provider of the payee the full originator information within 3 working days, excluding the day on which the request was made.

(9)   Where a payment service provider of the payer fails to comply with a request to provide the full originator information within the period specified in subsection (8), the payment service provider of the payee may notify the Commission which shall require the payment service provider of the payer to comply with the request immediately.

(10)   Without prejudice to subsection (9), where a payment service provider of the payer fails to comply with a request, the payment service provider of the payee may—

(a)   issue such warning to the payment service provider of the payer as may be considered necessary;

(b)   set a deadline to enable the payment service provider of the payer to provide the required full originator information;

(c)   reject future transfers of funds from the payment service provider of the payer;

(d)   restrict or terminate its business relationship with the payment service provider of the payer with respect to transfer of funds services or any mutual supply of services.

(11)   A payment service provider of a payer shall not execute a transfer of funds if the requirements of this section are not complied with respect to the transfer.

Amendment of section 47

22.   The Code is amended in section 47—

(a) by deleting subsections (1) and (3);

(b)   by deleting subsection (2) and substituting the following—

"(2)   The payment service provider of a payee shall take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify transfers of funds with any missing or incomplete—

(a)   full originator information; or

(b)   full beneficiary information.

(2a)   In relation to a transfer of funds in an amount exceeding $2,500, the payment service provider of the payee shall verify the identity of the payee, if the identity has not been previously verified, and keep and retain the evidence of identity in accordance with section 17 of the AML/CFT Regulations.";

(c)   by deleting subsections (4) to (6) and substituting the following—

"(4)   A payment service provider of a payee shall establish and maintain risk-based policies and procedures for determining—

(a)   when to execute, reject, or suspend a transfer of funds where the full originator information or the full beneficiary information is missing or incomplete; and

(b)   the appropriate follow-up action.

(5)   Where the payment service provider of the payee becomes aware that the full originator information on the payer or the full beneficiary information with respect to a transfer of funds on the payee is missing or incomplete, the payment service provider of the payee shall—

(a)   reject the transfer; or

(b)   request for the full originator information on the payer and beneficiary information;

and, in either case determine whether and what follow-up action is appropriate.

(6)   Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall adopt reasonable measures to rectify non-compliance with these Regulations, before—

(a)   rejecting any future transfers of funds from that payment service provider;

(b)   restricting its business relationship with that payment service provider; or

(c)   terminating its business relationship with that payment service provider;

and the payment service provider of the payee shall report to the Commission and to the Unit any such decision to restrict or terminate its business relationship with that payment service provider.

(7)   A payment service provider of a payee shall not take action under subsection (5) or (6) if doing so would result in the payment service provider contravening a provision of the Act or the terrorist financing laws.

(8)   The payment service provider of a payee shall consider incomplete information about the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether the suspicion should be reported to the Unit as suspicious activity report.

(9)   The payment service provider of the payee shall keep records of any originator information on the payer and beneficiary information on the payee received for a period of at least 5 years.".

Amendment of section 48

23.   The Code is amended in section 48 by—

(a) in subsection (2), by deleting the phrase "any information it receives on the payer" and substituting "all originator and beneficiary information";

(b) in subsection (3), by deleting the phrase "the information on the payer" and substituting the phrase "the required originator and beneficiary information";

(c) in subsection (4), by inserting the phrase "or payee" after the phrase "information on the payer";

(d) by inserting the following new subsections after subsections after subsection (6)—

"(6a)   An intermediary payment services provider shall take reasonable measures, consistent with straight through processing, to identify transfers of funds that lack full originator information or full beneficiary information.

(6b)   For the purposes of subsection (6a), "straight through processing" means transfers of funds that are conducted electronically without the need for manual intervention.

(6c)   An intermediary payment services provider shall have risk-based policies and procedures for determining—

(a)   when to execute, reject, or suspend a transfer of funds lacking full originator information or full beneficiary information; and

(b)   the appropriate follow-up action.

Insertion of new section 48A

24.   The Code is amended by inserting the following new section after section 48—

"**Money or Value Transfer Services providers**

48A.   (1)   A money or value transfer services provider shall comply with all the relevant requirements of this Part in the countries in which it operates, whether directly or through its agents.

(2)   A money or value transfer services provider that controls both the payment services provider of the payer and the payment services provider of the payee, shall—

(a)   consider the information from both the payment services provider of the payer and the payment services provider of the payee to determine whether a suspicious activity report should be filed; and

(b)   file a suspicious activity report or suspicious transaction report in the country from or to which the suspicious transfer of funds originated or was destined, respectively and make relevant transaction information available to the Unit and the relevant authorities in the country.".

Substitution of "the Unit" for "the Reporting Authority"

25.   The Code is amended by deleting the phrase "the Reporting Authority" wherever it appears and substituting the phrase "the Unit".

Citation

26.   This Code may be cited as the Anti-Money Laundering and Terrorist Financing (Amendment) Code, 2022.

 Made by the Commission after consultation with the Governor this   day of   , 2022.

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