

Regulations of Anguilla: 36/2013

Gazette Dated: 16 October, 2013

PROCEEDS OF CRIME ACT, R.S.A. c. P98

**ANTI-MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT)
REGULATIONS, 2013**

NOTE: These Regulations are enabled under section 158 of the Proceeds of Crime Act, R.S.A. c. P98.

Interpretation

1. In these Regulations, the “principal Regulations” means the Anti-money Laundering and Terrorist Financing Regulations, R.R.A. P98-1.

Amendment of section 1

2. Section 1 of the principal Regulations is amended—

(a) in subsection (1)—

(i) by inserting the following definitions in the appropriate alphabetical order—

““Act” means the Proceeds of Crime Act, R.S.A. c. P98;

“AML/CFT obligation”, in relation to a service provider, means an obligation of the service provider under the Act or any other law relating to money laundering or terrorist financing, these Regulations, the Externally Regulated and Non-Regulated Service Providers Regulations or any Code issued under the Act, and includes—

(a) in the case of any service provider, an obligation to provide information imposed on the service provider in a notice given to it by the Reporting Authority under section 118(2)(b) of the Act; and

(b) in the case of an externally regulated or a non-regulated service provider, an obligation imposed by a directive given under Schedule 4 of the Act;

“Anti-terrorist Financing Order” means the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, or such Order or other law as may replace that Order;

“applicable Code”, in relation to a service provider, means a Code that applies to the service provider;

“customer due diligence information”, in relation to a service provider, has the meaning specified in the applicable Code;

“domestic politically exposed person” has the meaning specified in section 5(3);

“externally regulated service provider” has the meaning specified in Schedule 3;

“foreign politically exposed person” has the meaning specified in section 5(2);

“identification information”, in relation to a service provider, has the meaning specified in the applicable Code;

“terrorism” has the meaning specified in section 2(4) – 2(7) of the UK Terrorist Asset-Freezing Act;

“terrorist financing” means—

(a) conduct referred to in—

- (i) sections 11, 12, 13, 14, 15 and 18 of the UK Terrorist Asset-Freezing Act,
- (ii) sections 14, 15, 16, 17 and 18 of the Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012,
- (iii) sections 6 to 9 of the Anti-terrorist Financing Order,
- (iv) sections 14, 15, 16, 17 and 18 of the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012; or

(b) wilfully providing or collecting funds by any means, directly or indirectly, with the knowledge or intention that they are to be used or should be used in full or in part to facilitate the commission of terrorist acts, or to any persons or entities acting on behalf of, or at the direction of a person who finances terrorism;

“terrorist financing laws” means—

- (a) the Anti-terrorist Financing Order;
- (b) the Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012;
- (c) the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012;
- (d) the UK Terrorist Asset-Freezing Act; and
- (e) any law that may replace a law specified in paragraphs (a) to (d);

“UK Terrorist Asset-Freezing Act” means the provisions of the Terrorist Asset-Freezing etc. Act 2010 of the United Kingdom as extended to Anguilla by the Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011, as modified by that Order;”,

- (ii) in the definition of “bank”, by inserting “Anguilla” before “bank”,
- (iii) in the definition of “Code”, by inserting “by the Commission” after “issued”,
- (iv) in the definition of “corresponding banking”, by inserting “relationship” after “banking”,

- (v) in the definition of “FATF”, by deleting “on Money Laundering” and substituting “or such other international body as may succeed it”,
- (vi) by deleting the definition of “FATF Recommendations” and substituting the following—

““FATF Recommendations” means the FATF Recommendations, Interpretive Notes and Glossary issued by the FATF in February 2012, incorporating such amendments as may from time-to-time be made to the Recommendations, or such document or documents issued by the FATF as may supersede those Recommendations;”,
- (vii) by deleting the definition of “foreign regulatory authority” and substituting the following—

““foreign regulatory authority” means an authority in a country outside Anguilla which exercises, in that country, supervisory functions substantially corresponding to those of the Commission or another supervisory authority with respect to enforcing compliance with the Act, these Regulations and the Codes;”,
- (viii) in the definition of “politically exposed person”, by deleting “section 5” and substituting “section 5(1)”,
- (ix) in the definition of “recognised exchange”—
 - (A) by inserting “, subject to subsection (4),” after “means”, and
 - (B) by deleting “a Code” and substituting “the Codes”,
- (x) in the definition of “relevant business”, by deleting “within the meaning of Schedule 2”,
- (xi) in the definition of “service provider”, by deleting “means a person specified in” and substituting “has the meaning specified in”, and
- (xii) by deleting the definition of “terrorist financing disclosure” and substituting the following—

“terrorist financing disclosure” means a disclosure under—

 - (a) section 19 of the UK Terrorist Asset-Freezing Act ;
 - (b) section 22 of the Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012;
 - (c) section 10 or Part 1 of Schedule 1 of the of the Anti-terrorist Financing Order; or
 - (d) section 22 of the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012;”,
- (b) in subsection (2), by deleting “the Code” and substituting “the Codes”;
- (c) by adding the following subsection after subsection (3)—

“(4) An exchange is not a recognised exchange if—

- (a) it is situated in a country specified by the Commission by notice published in such manner as it considers appropriate, as a country that does not implement, or does not effectively apply, the FATF Recommendations; or
- (b) being a member of the World Federation of Exchanges, the Commission publishes a notice in such manner as it considers appropriate, specifying that it is not a recognised exchange.”.

Amendment of section 4

3. Section 4(1)(d) of the principal Regulations is amended by deleting “the identity of”.

Substitution of section 5

4. Section 5 of the principal Regulations is deleted and the following substituted—

“Meaning of “politically exposed person”, “foreign politically exposed person”, “domestic politically exposed person” and associated terms

5. (1) “Politically exposed person” means—

- (a) a foreign politically exposed person;
- (b) a domestic politically exposed person; or
- (c) a person who is, or has been, entrusted with a prominent function by an international organisation.

(2) “Foreign politically exposed person” means a person who is, or has been, entrusted with a prominent public function by a country other than Anguilla.

(3) “Domestic politically exposed person” means a person who is, or has been, entrusted with a prominent public function by Anguilla.

(4) Without limiting subsections (2) or (3), the following have or exercise prominent public functions in relation to a country—

- (a) heads of state, heads of government and senior politicians;
- (b) senior government or judicial officials;
- (c) high-ranking officers in the armed forces;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors and chargés d'affaires;
- (f) senior executives of state-owned corporations; and
- (g) important political party officials.

- (5) “International organisation” means an entity—

- (a) established by formal political agreement between its member countries that has the status of an international treaty;
- (b) whose existence is recognised by law in its member countries; and

(b) not treated as a resident institutional unit of the country in which it is located.

(6) For the purposes of paragraph (1)(c), the following have or exercise prominent functions in relation to an international organisation—

- (a) the directors and deputy directors of the international organisation;
- (b) the members of the board or governing body of the international organisation; and
- (c) other members of the senior management of the international organisation.

(7) The following are immediate family members of a politically exposed person—

- (a) a spouse;
- (b) a partner;
- (c) children and their spouses or partners;
- (d) parents;
- (e) grandparents and grandchildren; and
- (f) siblings.

(8) For the purposes of paragraphs (7)(b) and (c), “partner” means—

- (a) a person who lives in a domestic relationship which is similar to the relationship between husband and wife; or
- (b) a person in a relationship with another person who is considered by the law of any jurisdiction which applies to the relationship as equivalent to a spouse.

(9) The following are close associates of a politically exposed person —

- (a) any person known to maintain a close business relationship with that person or to be in a position to conduct substantial financial transactions on behalf of the person;
- (b) any person who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with that person; and
- (c) any person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of that person.

(10) For the purposes of deciding whether a person is a close associate of a politically exposed person, a service provider need only have regard to information which is in that person’s possession or is publicly known.”.

Amendment of section 6

5. Section 6 of the principal Regulations is amended—

- (a) in the section heading, by inserting “relationship” after “correspondent banking”;

- (b) in subsection (1), by deleting ““Correspondent banking” means” and substituting ““Correspondent banking relationship” means a relationship that involves”; and
- (c) in subsection (3), by deleting paragraph (b) and substituting the following—
 - “(b) is not an affiliate of a corporate body that—
 - (i) has a physical presence in a country that involves meaningful decision-making and management,
 - (ii) is authorised to carry on banking business in that country, and
 - (iii) is subject to effective consolidated supervision in relation to its banking business, which extends to its affiliates.”.

Amendment of section 7

- 6. Section 7(c)(i) of the principal Regulations is amended by deleting “, for the time being issued.”.

Amendment of section 8

- 7. Section 8 of the principal Regulations is amended by deleting “persons who are service providers within the meaning of Schedule 2” and substituting “service providers”.

Amendment of section 9

- 8. Section 9 of the principal Regulations is amended—
 - (a) in the section heading, by deleting “Code” and substituting “Codes”;
 - (b) in paragraphs (1)(a) and (b), by deleting “Code” and substituting “applicable Codes”;
 - (c) in subsection (3), by deleting “Code” and substituting “applicable Codes”; and
 - (d) by deleting “FATF 40” and substituting “FATF Recommendations”.

Amendment of section 10

- 9. Section 10 of the principal Regulations is amended—
 - (a) in the section heading, by inserting “and risk assessment” after “ongoing monitoring”;
 - (b) in subsection (2), by inserting “and paragraph (1)(c)” after “subparagraph (1)(b)(ii)”; and
 - (c) in subsection (4)(b), by deleting “relevant” before “supervisory authority”.

Amendment of section 11

- 10. Section 11 of the principal Regulations is amended in the section heading, by deleting “transactions” and substituting “transaction”.

Amendment of section 12

- 11. Section 12(2) of the principal Regulations is amended—
 - (a) in paragraph (b), by deleting “FATF recommendations” and substituting “FATF Recommendations”;

- (b) in paragraph (d), by inserting “or a family member or close associate of a politically exposed person” after “a politically exposed person”; and
- (c) in paragraph (e), by inserting “or a family member or close associate of a politically exposed person” after “a politically exposed person”.

Amendment of section 13

12. Section 13 of the principal Regulations is amended—

- (a) in subsection (1), by deleting “Subject to any requirements in the Code” and substituting “Subject to subsections (2A) and (3) and any requirements in an applicable Code”; and
- (b) by inserting the following subsection after subsection (2)—

“(2A) Where a service provider relies on an introducer or an intermediary to apply customer due diligence measures in respect of a customer, third party or beneficial owner, the service provider shall immediately obtain from the introducer or intermediary, the customer due diligence information concerning the customer, third party or beneficial owner.”.

Amendment of section 14

13. Section 14 of the principal Regulations is amended—

- (a) in subsection (2), by deleting “Subsection (1)(a)” and substituting “Paragraph (1)(a)”; and
- (b) by deleting subsection (3) and substituting the following—

“(3) Subsection (1) does not apply if—

 - (a) the service provider suspects money laundering or terrorist financing;
 - (b) the customer is located, or resides, in a country that does not apply, or insufficiently applies, the FATF Recommendations; or
 - (c) a higher risk of money laundering or terrorist financing has been identified.”; and
- (c) by inserting the following after subsection (3)—

“(4) For the purposes of paragraph (1)(a), a “public authority in Anguilla” includes the Government of Anguilla, any government ministry or department and any government agency.”

Amendment of section 15

14. Section 15 of the principal Regulations is amended—

- (a) in subsection (1), by deleting “A bank that carries on banking business in or from within Anguilla” and substituting “An Anguilla bank”;
- (b) in subsection (2), by inserting “a numbered account,” before “an anonymous account”; and
- (c) in subsection (3), by deleting “A bank” and substituting “An Anguilla bank”.

Amendment of heading to Part 3

15. The heading to Part 3 of the principal Regulations is amended by inserting “PROCEDURES,” after “POLICIES,”.

Amendment of section 16

16. Section 16 of the principal Regulations is amended—

- (a) in the section heading, by inserting “procedures,” after “Policies,”; and
- (b) in subsection (2)—
 - (i) in paragraph (b), by inserting “and” after the semi colon,
 - (ii) in subparagraph (c)(i), by inserting “or a family member or close associate of a politically exposed person” after “a politically exposed person”, and
 - (iii) in subparagraph (c)(ii), by inserting “or” after “the FATF Recommendations,”.

Amendment of section 17

17. Section 17 of the principal Regulations is amended—

- (a) in subsection (1), by deleting “the Code” and substituting “an applicable Code”;
- (b) in subsection (4), by deleting “another person” and substituting “another service provider”;
- (c) in subsection (7), by deleting “a person relies on another person” and substituting “a service provider relies on another service provider”.

Amendment of section 19

18. Section 19(1) of the principal Regulations is amended in paragraph (a), by deleting “or an applicable Code” and substituting “and the Code”.

Amendment of section 20

19. Section 20 of the principal Regulations is amended—

- (a) in subsection (1), by deleting “relevant” before “supervisory authority”;
- (b) by deleting subsection (3) and substituting the following—

“(3) A service provider shall ensure that—

 - (a) the individual appointed as money laundering compliance officer under this section is of an appropriate level of seniority; and
 - (b) the money laundering compliance officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as money laundering compliance officer.”;
- (c) in subsection (4)—
 - (i) by deleting “the principle function” and substituting “the principal function”;

- (ii) by deleting “all legislation” and substituting “all laws”, and
- (iii) by deleting “Code” and substituting “applicable Codes”;
- (d) in subsection (5), by deleting “forthwith appoint another individual approved by the relevant supervisory authority” and substituting “as soon as reasonably practicable appoint another individual approved by the supervisory authority”;
- (e) in subsection (6), by deleting “relevant” before “supervisory authority”;
- (f) by inserting the following subsection after subsection (7)—

“(7A) With the approval of the Commission, the same individual may be appointed as the compliance officer and the money laundering compliance officer of a regulated service provider or of an externally regulated service provider.”; and
- (g) in subsection (8), by deleting “The Code” and substituting “The Codes”.

Amendment of section 21

20. Section 21 of the principal Regulations is amended—

- (a) in subsection (1), by inserting “approved by the supervisory authority” after “appoint an individual”;
- (b) in subsection (3), by deleting “forthwith appoint another individual approved by the relevant supervisory authority” and substituting “as soon as reasonably practicable appoint another individual approved by the supervisory authority”;
- (c) in subsection (4), by deleting “relevant” before “supervisory authority”; and
- (d) in subsection (6), by deleting “The Code” and substituting “The Codes”.

Insertion of section 21A

21. The principal Regulations are amended by inserting the following sections after the heading for Part 5—

“Interpretation

21A. For the purposes of this Part—

“direction” means a direction given under section 22;

“exemption” means an exemption granted under section 22A(3).”.

Deletion and substitution of section 22

22. Section 22 of the principal Regulations is deleted and the following substituted—

“Directions may be given by Commission to financial businesses

22. (1) The Commission may give a direction of a type specified in section 22A to a financial business, financial businesses of a specified type or description of financial business or all financial businesses, in relation to transactions or business relationships with—

- (a) the government of, or

- (b) any person or persons—
 - (i) carrying on business in, or
 - (ii) resident, incorporated, constituted or formed in,
 a country in relation to which one or more of the conditions specified in subsection (2) applies.
- (2) The conditions referred to in subsection (1) are that—
 - (a) the FATF has advised that measures should be taken in relation to the country because of the risk that money laundering or terrorist financing is being carried on—
 - (i) in the country,
 - (ii) by the government of the country, or
 - (iii) by persons resident in the country; or
 - (b) the Commission reasonably believes that there is a risk that money laundering or terrorist financing is being carried on—
 - (i) in the country,
 - (ii) by the government of the country, or
 - (iii) by persons resident in the country;
 and that this poses a significant risk to the interests of Anguilla.

- (3) A direction—
 - (a) shall be given in the manner specified in section 22B;
 - (b) shall be proportionate having regard to the advice given by the FATF or, as the case may be, the risk referred to in paragraph (2)(b) or (c) to the interests of Anguilla; and
 - (c) may make different provision in relation to different financial businesses, designated persons, circumstances or cases.

(4) The Commission shall take appropriate measures to monitor the compliance of financial businesses with the requirements of any directions given.”.

Insertion of sections 22A to 22C

23. The principal Regulations are amended by inserting the following sections after section 22—

“Types of directions that may be given

22A. (1) A direction may require the financial business—

- (a) to undertake enhanced customer due diligence measures—
 - (i) before entering into a transaction or business relationship with a designated person, and

- (ii) during a business relationship with such a person;
- (b) to undertake enhanced ongoing monitoring of any business relationship with a designated person;
- (c) to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons; or
- (d) not to enter into or continue to participate in—
 - (i) a specified transaction or business relationship with a designated person, or
 - (ii) any transaction or business relationship with a designated person.
- (2) A direction under paragraph (1)(c)—
 - (a) shall specify how the direction is to be complied with, including—
 - (i) the person to whom the information and documents are to be provided, and
 - (ii) the period within which, or intervals at which, information and documents are to be provided; and
 - (b) is not exercisable in relation to privileged material.
- (3) Where a direction includes requirements of a kind specified in paragraph (1)(d), the Commission may, either in the direction or by separate notice in writing, exempt acts specified in the direction or notice from the requirements.
- (4) An exemption may—
 - (a) be a general exemption or may apply to a particular financial business;
 - (b) be subject to conditions;
 - (c) have effect for the duration of the direction or be subject to an expiry date; and
 - (d) be varied or revoked by the Commission at any time.

Procedures for giving directions and granting exemptions

- 22B.** (1) Where a direction is a general direction or an exemption is a general exemption, the Commission must publish the direction or exemption in such manner as it considers appropriate.
- (2) A general direction is subject to annulment by resolution of the House of Assembly.
 - (3) Where a general direction or a general exemption is varied or ceases to have effect, whether on revocation or otherwise, the Commission must publish that fact in such manner as it considers appropriate.
 - (4) Where the Commission gives a direction or grants an exemption to a particular financial business, the Commission must give written notice of the direction or the exemption to that financial business.

(5) Where a direction or exemption referred to in subsection (4) is varied or ceases to have effect, whether on revocation or otherwise, the Commission must give notice of that fact to the financial business.

(6) A direction, whether a general direction or a direction to a particular financial business—

- (a) may be varied or revoked by the Commission at any time; and
- (b) if not previously revoked, ceases to have effect at the end of one year from the date that it was first given.

Offences

22C. (1) Subject to subsection (2), a financial business is guilty of an offence if the service provider—

- (a) fails to comply with a direction; or
- (b) for the purpose of obtaining the grant of an exemption under section 22A(3)—
 - (i) provides information that is false in a material respect or a document that is not what it purports to be, and
 - (ii) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.

(2) A financial business does not commit an offence under paragraph (1)(a) if the financial business took all reasonable steps and exercised all due diligence to ensure that the direction would be complied with.

(3) A financial business that is guilty of an offence under this section is liable—

- (a) in the case of a company or a partnership—
 - (i) on summary conviction, to a fine of \$10,000, and
 - (ii) on conviction on indictment, to a fine of \$50,000; and
- (b) in the case of any other person—
 - (i) on summary conviction, to imprisonment for a term of 6 months or to a fine of \$10,000 or to both; or
 - (ii) on conviction on indictment, to imprisonment for a term of 1 year or to a fine of \$50,000 or to both.”.

Amendment of section 23

24. Section 23 of the principal Regulations is amended, by deleting “service providers who are not regulated persons for the purposes of section 160(1) of the Act” and substituting “non-regulated service providers”.

Amendment of section 24

25. Section 24 of the principal Regulations is amended—

- (a) by removing the designation of the existing provision as subsection (1);
- (b) by deleting “at the regulated person” and substituting “with the regulated person”; and
- (c) in paragraphs (h) and (i), by deleting “at the financial institution”, in both places that the words occur, and substituting “with the regulated person”.

Substitution of section 26

26. Section 26 of the principal Regulations is deleted and the following is substituted—

“Penalties, disciplinary action

26. The maximum penalty that may be imposed by the Commission for a breach of these Regulations or the Codes is the amount prescribed in accordance with section 47(3)(b) of the Financial Services Commission Act.”

Amendment of Schedule 1

27. Schedule 1 of the principal Regulations is amended by adding the following after paragraph (h)—

“(i) a licence issued under the Money Services Business Act.”.

Addition of Schedule 3

28. The principal Regulations is amended by adding the following Schedule after Schedule 2—

“SCHEDULE 3

(Section 2)

EXTERNALLY REGULATED SERVICE PROVIDERS

The following are “externally regulated service providers”—

- (a) a person who holds a licence issued under the Banking Act; and
- (b) a person who holds a licence issued under Part 4 or Part 9 of the Securities Act.”.

Citation and commencement

29. These Regulations may be cited as the Anti-Money Laundering and Terrorist Financing (Amendment) Regulations, and they come into force on the same day as the Proceeds of Crime (Amendment) Act, 2013 comes into force.

Made by the Governor in Council, this 23rd day of September, 2013

Christina Scott
GOVERNOR OF ANGUILLA
