

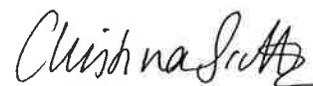


ANGUILLA

PROCEEDS OF CRIME (AMENDMENT) ACT, 2013

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ANGUILLA

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PROCEEDS OF CRIME (AMENDMENT) ACT, 2013

An Act to amend the Proceeds of Crime Act to enhance compliance with international standards.

[Gazetted: 30th September, 2013] [Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act, the “Principal Act” means the Proceeds of Crime Act, R.S.A. c. P98.

Amendment of section 1

2. Section 1 of the Principal Act is amended—
 - (a) by inserting the following definitions in the appropriate alphabetical order—
 - ““AML/CFT obligation” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;
 - “conduct” includes omissions;
 - “externally regulated service provider” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;
 - “ENRSP Regulations” means the Externally and Non-Regulated Service Provider Regulations made under section 152F;
 - “external supervisor”, in the case of an externally regulated service provider, means the supervisory authority responsible for supervising the licensed business of the service provider carried on in Anguilla;
 - “non-profit organisation” or “NPO” means an organisation that—
 - (a) is established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of benefiting the public or a section of the public; and

(b) raises or disburses funds in pursuance of those purposes;

“Non-Profit Organisations Regulations” means the regulations made under section 152H;

“non-regulated service provider” means a service provider that is neither a regulated service provider nor an externally regulated service provider;

“NPO Code” means the Code made under section 152H(b)(iii);

“NPO Supervisor” means the person or body designated as NPO Supervisor in the Non-Profit Organisations Regulations;

“organisation” means a body of persons (whether incorporated or unincorporated), any legal entity and any equivalent or similar structure or arrangement and includes persons acting as the trustees of a trust;

“relevant service provider”, in relation to a supervisory authority, means a service provider whom the supervisory authority is responsible for supervising, in accordance with section 152A;

“supervisory authority”, in relation to a service provider, means the supervisory authority that is responsible for the supervision of the service provider, in accordance with section 152A;

“terrorism” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

“terrorist financing laws” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

(b) in the definition of “Anti-terrorist Financing Order”, by deleting “means the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, or such Order or other law as may replace that Order” and substituting “has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations”;

(c) in paragraph (b) of the definition of “financial intelligence unit”, by deleting “or enactment”;

(d) in the definition of “money laundering”, by inserting “or” in paragraph (a) after the semi colon;

(e) by deleting the definition of “relevant supervisory authority”; and

(f) by deleting the definition of “terrorist financing” and substituting the following—

“terrorist financing” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;”.

Amendment of section 76

3. Section 76(2)(a) of the Principal Act is amended by inserting “or reasonable legal” before “expenses”.

Amendment of section 104

4. Section 104(2)(b) of the Principal Act is amended by inserting “or a property freezing order” after “interim receiving order”.

Amendment of section 110

5. Section 110(2) of the Principal Act is amended by inserting “reasonably” before “practicable”.

Amendment of section 118

6. Section 118 of the Principal Act is amended—

(a) in paragraph (1)(b), by deleting “any enactment” and substituting “any law”; and

(b) by inserting the following after subsection (4)—

“(4A) For the avoidance of doubt, the Reporting Authority may issue a notice referred to in paragraph (2)(b) the person who disclosed to the Reporting Authority the information to be clarified or amplified or to any other person.

(4B) A disclosure made in compliance with a notice issued by the Reporting Authority under paragraph (2)(b) shall be treated as a protected disclosure for the purposes of section 133(2) and (3).

(4C) A person who, without reasonable excuse, fails to comply with a notice issued by the Reporting Authority under paragraph (2)(b) is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding \$25,000; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$50,000 or to both.”.

Amendment of section 120

7. Section 120 of the Principal Act is amended by deleting “any other enactment” and substituting “any other law”.

Amendment of section 121

8. Section 121(1)(a) of the Principal Act is amended by deleting “any other enactment” and substituting “any other law”.

Amendment of section 124

9. Section 124 of the Principal Act is amended—

(a) in subsection (2) —

(i) in paragraph (b), by deleting “and” after the semi colon,

(ii) in paragraph (c), by deleting “section 133” and substituting “section 133(1); and”, and

(iii) by inserting the following paragraph after paragraph (c)—

“(d) “authorised disclosure” has the meaning specified in subsection (3).”;

(b) in subsection (3)—

(i) in paragraph (a), by inserting “and” after the semi colon,

(ii) by deleting paragraph (b), and

(iii) by deleting paragraph (c) and inserting the following paragraph—

“(b) one of the conditions specified in paragraph (3A)(a), (b) or (c) is satisfied.”; and

(c) by inserting the following subsection after subsection (3)—

“(3A) The conditions referred to in subsection (3) are that—

(a) the person makes the disclosure before he does the prohibited act;

(b) the person makes the disclosure while he is doing the prohibited act, he began to do the act at a time when, because he did not know or suspect that the property constituted or represented a person’s benefit from criminal conduct the act was not a prohibited act, and the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person’s benefit from criminal conduct;

(c) the person makes the disclosure after he does the prohibited act, there is good reason for his failure to make the disclosure before he did the prohibited act and the disclosure is made on his own initiative and as soon as it is practicable for him to make it.”.

Amendment of section 125

10. Section 125(2)(c) of the Principal Act is amended by deleting “any other enactment” and substituting “any other law”.

Amendment of section 126

11. Section 126(2)(c) of the Principal Act is amended by deleting “any other enactment” and substituting “any other law”.

Amendment of section 127

12. Section 127(2)(d) of the Principal Act is amended by deleting “any other enactment” and substituting “any other law”.

Amendment to section 131

13. Section 131 of the Principal Act is amended—

(a) by deleting the section heading and substituting the following—

“Prejudicing an investigation”; and

(b) by repealing subsection (2).

Insertion of section 131A

14. The Principal Act is amended by inserting the following section after section 131—

“Tipping off

131A. (1) For the purposes of this section, “relevant disclosure” means a disclosure made by a person under or in accordance with this Part to—

- (a) the Reporting Authority; or
- (b) the person’s relevant Money Laundering Reporting Officer;

and includes, but is not limited to, an authorised disclosure and a protected disclosure and information disclosed that is related to the disclosure.

(2) Subject to section 132, a person is guilty of an offence if—

- (a) he knows or suspects that a relevant disclosure is being or has been made, whether by himself or another person;
- (b) he discloses the fact that a relevant disclosure is being or has been made;
- (c) his disclosure is likely to prejudice any investigation that might be conducted following the relevant disclosure referred to in subsection (2); and
- (d) the information concerning the relevant disclosure came to him in the course of a relevant business.

(3) Subject to section 132, a person is guilty of an offence if—

- (a) the person discloses that an investigation into allegations that a money laundering offence has been committed, is being contemplated or is being carried out;
- (b) the disclosure is likely to prejudice that investigation; and
- (c) the information on which the disclosure is based came to him in the course of a relevant business.

(4) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding five years or a fine not exceeding \$200,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine without limit or to both.”.

Amendment of section 132

15. Section 132 of the Principal Act is amended—

- (a) in the section heading, by deleting “section 131” and substituting “sections 131 and 131A”;
- (b) by repealing subsection (3), and substituting the following—

“(3) In proceedings against a person for an offence under section 131 or section 131A, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way specified in section 131(1)(b)(i), 131A(2)(c) or 131A(3)(b), as the case may be.”;

(c) in subsection (5)—

(i) by inserting “or section 131A” after “section 131”, and

(ii) by deleting “any other enactment” and substituting “any other law”; and

(d) by inserting the following after subsection (5)—

“(6) The regulations may specify circumstances in which a person making a disclosure that falls within section 131A(2) or (3) is not guilty of an offence.”.

Amendment of section 133

16. Section 133 of the Principal Act is amended—

(a) by deleting the section heading and substituting the following—

“Protection in relation to protected and authorised disclosures”;

(b) in paragraph (1)(c), by deleting “, or to the relevant Money Laundering Reporting Officer in accordance with the procedures established by his employer for the purpose, as soon as is practicable” and substituting “or the relevant Money Laundering Reporting Officer, as soon as is reasonably practicable”; and

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

“(2) Where a person makes a protected disclosure or an authorised disclosure, the disclosure—

(a) shall not be treated as a breach of any law, rule of law or agreement restricting the disclosure of information; and

(b) shall not give rise to criminal or civil proceedings.

(3) For the avoidance of doubt, where a director, officer or employee of a service provider makes a protected disclosure or an authorised disclosure—

(a) the director, officer or employee of the service provider, shall not be treated as having breached any law, rule of law or agreement restricting the disclosure of information; and

(b) no criminal or civil proceedings may be taken against the director, officer or employee of a service provider, or against the service provider, by reason of the disclosure.”.

Amendment of section 143

17. Section 143(5) of the Principal Act is amended by deleting “any enactment” and substituting “any law”.

Amendment of section 150

18. Section 150(4) of the Principal Act is amended by deleting “any enactment” and substituting “any law”.

Insertion of Part 6A

19. The Principal Act is amended by inserting the following after Part 6—

“PART 6A**REGULATION, SUPERVISION AND ENFORCEMENT****Division 1***Service providers***Supervisory authorities**

152A. (1) The Commission is the supervisory authority for regulated service providers and for externally regulated service providers.

(2) The Anti-money Laundering and Terrorist Financing Regulations shall designate—

- (a) a person or body, which may be the Commission, as the sole supervisory authority for all non-regulated service providers; or
- (b) different persons or bodies, which may include the Commission, as the supervisory authority for different types of non-regulated service provider.

Objective, functions and powers of the supervisory authorities

152B. (1) The objective of a supervisory authority is to supervise relevant service providers in relation to their AML/CFT obligations and to enforce compliance with those obligations.

(2) The functions of a supervisory authority are—

- (a) to monitor the compliance of relevant service providers with their AML/CFT obligations;
- (b) to take appropriate enforcement action against relevant service providers for breaches of, or non-compliance with, their AML/CFT obligations;
- (c) in the case of a supervisory authority for externally regulated or non-regulated service providers, to—
 - (i) determine applications for registration in accordance with the ENRSP Regulations, and

- (ii) to take appropriate action against relevant service providers who carry on relevant business without being registered in accordance with the ENRSP Regulations; and
- (d) to perform such other functions, and exercise such powers—
 - (i) as may be assigned to the supervisory authority by this Act, any regulations made under this Act or any other law, or
 - (ii) that are ancillary to its objective.
- (3) In implementing its objective and in performing its functions, a supervisory authority has—
 - (a) in the case of the Commission when acting as the supervisory authority for regulated service providers, the information gathering, enforcement and other powers provided for in the Financial Services Commission Act; and
 - (b) in the case of—
 - (i) the Commission, when acting as the supervisory authority for externally regulated service providers, and
 - (ii) a supervisory authority for non-regulated service providers, the information gathering, enforcement and other powers provided for in Schedule 4.
- (4) In determining the enforcement action to be taken against a relevant service provider for a breach of, or failure to comply with, its AML/CFT obligations, a supervisory authority must have regard for the need to ensure that enforcement action taken is effective, proportionate and dissuasive.
- (5) Where a breach of a service provider's AML/CFT obligations constitutes an offence, the taking of enforcement action by a supervisory authority does not prevent the service provider being also prosecuted for the offence.

Duty to cooperate

152C. (1) A supervisory authority shall take such steps as it considers appropriate to co-operate with—

- (a) the Reporting Authority;
- (b) law enforcement agencies in Anguilla; and
- (c) any other supervisory authorities.

(2) Co-operation may include the sharing of documents and information which the supervisory authority is not prevented by this or any other law from disclosing.

Limitation of liability of supervisory authorities

152D. (1) No person or body to whom this section applies is liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Act unless it is proved that the act or omission was in bad faith.

(2) This section applies to—

- (a) each supervisory authority; and
- (b) any member of a supervisory authority or any person who is, or is acting as, a board member, director, officer, employee or agent of the supervisory authority or who is performing any duty or exercising any power on behalf of the supervisory authority.

Prohibition on carrying on relevant business if not registered

152E. (1) Subject to subsection (2), a person shall not carry on any type of relevant business in or from within Anguilla unless that person has been registered for that type of relevant business by the appropriate supervisory authority in accordance with the ENRSP Regulations.

(2) Subsection (1) does not apply to a regulated service provider.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$50,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

Regulations, externally regulated and non-regulated service providers

152F. (1) The Governor in Council shall make regulations providing for—

- (a) the registration of externally regulated and non-regulated service providers;
- (b) the de-registration of externally regulated and non-regulated service providers;
- (c) the imposition by relevant supervisory authorities against externally regulated and non-regulated service providers of administrative penalties in an amount not exceeding \$100,000 for any contravention of their AML/CFT obligations, including the basis for fixing those penalties and the manner in which those penalties may be paid;
- (d) the payment of fees to the relevant supervisory authorities by externally regulated and non-regulated service providers, including the categories of fee payable and the basis for assessment of the amount of those fees, and the imposition of late payment penalties when fees are not timely paid; and
- (e) such other matters relating to externally regulated and non-regulated service providers as this Act may require or permit.

(2) Without limiting subsection (1), the regulations made under this section may provide for—

- (a) types or levels of registration;
- (b) applications for registration;
- (c) the criteria for determining applications for registration;
- (d) the grant or refusal of an application for registration; and
- (e) such other matters as the Governor in Council considers appropriate generally for giving effect to this Division or to Schedule 4.

(3) The regulations made under this section may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) prescribe offences against the regulations and prescribe a term of imprisonment not exceeding 2 years, a fine not exceeding \$100,000 or both in respect of any offence.

(4) Fees and penalties paid to a relevant supervisory authority under regulations made in accordance with subsection (1) shall be used by the supervisory authority for the purposes of undertaking its functions.

Division 2

Non-profit organisations

Supervisory authority for non-profit organisations

152G. The Non-Profit Organisations Regulations shall designate a person or body, which may be the Commission, as the supervisory authority for non-profit organisations.

Non-Profit Organisations Regulations

152H. (1) The Governor in Council shall make regulations—

- (a) designating a person or body as the supervisory authority for non-profit organisations;
- (b) providing for—
 - (i) the registration of non-profit organisations,
 - (ii) the functions, duties and powers of the NPO Supervisor, including with respect to supervision, the gathering of information and the disclosure of information to the Reporting Authority and law enforcement authorities in Anguilla and for such other matters relating to non-profit organisations as this Act may require or permit,

- (iii) the issuance by the NPO Supervisor of a NPO Anti-money Laundering and Terrorist Financing Code setting out measures, not inconsistent with this Act, the Regulations made under this section and the terrorist financing laws, for the prevention and detection of money laundering and terrorist financing,
- (iv) enforcement actions that may be taken by the NPO Supervisor for failure to comply with the Regulations and the NPO Code, if issued, including the imposition of administrative penalties in an amount not exceeding \$50,000, the basis for fixing those penalties and the manner in which those penalties may be paid,
- (v) the maintenance of records by non-profit organisations,
- (vi) the monitoring by the NPO Supervisor of the compliance of non-profit organisations with the Regulations and the NPO Code, if issued,
- (vii) the circumstances in which the NPO Supervisor may conduct, or employ an examiner to conduct, an investigation of a NPO,
- (viii) the payment of fees to the NPO Supervisor by non-profit organisations, including the categories of fee payable and the basis for assessment of the amount of those fees, and
- (ix) such other matters relating to non-profit organisations as this Act may require or permit.

(2) Without limiting paragraph (1)(b), the regulations made under this section may provide for—

- (a) types or levels of registration;
- (b) applications for registration;
- (c) the criteria for determining applications for registration;
- (d) the grant or refusal of an application for registration; and
- (e) such other matters as the Governor in Council considers appropriate generally for giving effect to this Division.

(3) The regulations made under this section may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) prescribe offences against the regulations and prescribe a fine not exceeding \$50,000 in respect of any offence.

(4) Fees and penalties paid to the NPO Supervisor under regulations made in accordance with subsection (1) shall be used by the NPO Supervisor for the purposes of undertaking its functions.

Division 3*Appeals***Appeals**

152I. (1) Subject to subsection (2), a person who is aggrieved by a decision of a supervisory authority or the NPO Supervisor made under this Act or under any regulations made or Code issued under this Act may, within 28 days of the date of the decision, apply to the Court for leave to appeal against the decision.

(2) Unless the Court otherwise determines, an application for leave to appeal, an appeal and an application for judicial review, does not operate as a stay of the decision of the relevant supervisory authority or the NPO Supervisor in relation to which the application or appeal is made.

(3) Upon hearing an appeal, the Court may—

(a) dismiss the appeal; or

(b) remit the matter back to the relevant supervisory authority, or the NPO Supervisor, for further consideration with such directions as it considers fit.”.

Amendment of section 158

20. Section 158 of the Principal Act is amended by deleting subsection (1) and substituting the following—

“(1) The Governor shall make regulations—

(a) in relation to the prevention of the use of the financial system for money laundering and terrorist financing; and

(b) providing for the giving of directions by the Commission to financial businesses in certain specified circumstances, where there is, or the Commission reasonably believes, there is a risk of money laundering or terrorist financing or of the proliferation of weapons of mass destruction.”.

Amendment of section 159

21. Section 159 of the Principal Act is amended by deleting “, the Anti-terrorist Financing Order, the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 or the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002” and substituting “and the terrorist financing laws”.

Repeal of sections 160 to 164

22. Sections 160 to 164 of the Principal Act are repealed.

Repeal and replacement of Schedule 4

23. The Principal Act is amended by repealing Schedule 4 and replacing it with the following—

“SCHEDULE 4

(Section 152B(3)(b))

POWERS AND DUTIES OF SUPERVISORY AUTHORITIES IN RELATION TO EXTERNALLY REGULATED AND NON-REGULATED SERVICE PROVIDERS**Scope of this Schedule****1. This Schedule—**

- (a) sets out the powers and duties of—
 - (i) the Commission as the supervisory authority for externally regulated service providers, and
 - (ii) the supervisory authority, or if more than one, each supervisory authority, of non-regulated service providers, and
- (b) has no application to the Commission as the supervisory authority for regulated service providers.

Interpretation**2. (1) In this Schedule—**

“affiliate” has the meaning specified in the Financial Services Commission Act;

“director” has the meaning specified in the Financial Services Commission Act;

“former relevant service provider” means a person who at any time has been a relevant service provider, but who has ceased to be a relevant service provider;

“registered service provider” means a service provider who is registered under the ENRSP Regulations;

“parent” has the meaning specified in the Financial Services Commission Act;

“subsidiary” has the meaning specified in the Financial Services Commission Act;

“supervisory authority” means—

- (a) the Commission as the supervisory authority for externally regulated service providers; or
- (b) the supervisory authority, or where there is more than one, each supervisory authority, for non-regulated service providers;

“undertaking” has the meaning specified in the Financial Services Commission Act; ,

“unregistered service provider” means a service provider who is not registered under the ENRSP Regulations.

Power to require information and production of documents

3. (1) Where reasonably required for the discharge of its functions under this Act, the Anti-money Laundering and Terrorist Financing Regulations or a Code issued under this Act, a supervisory authority may, by written notice given to a person specified in subsection (2), require the person—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(2) A notice under subsection (1)—

- (a) may be issued to—
 - (i) a relevant service provider,
 - (ii) a former relevant service provider,
 - (iii) an affiliate of a relevant service provider or a former relevant service provider,
 - (iv) a director of a relevant service provider or a former relevant service provider that is an undertaking,
 - (v) a partner of a relevant service provider or a former relevant service provider that is a partnership,
 - (vi) a senior employee of a person specified in subparagraph (i), (ii), (iii), (iv) or (v), or
 - (vii) in the case of a notice requiring the production of documents, any person who the supervisory authority reasonably believes is in possession, or has control, of the documents;
- (b) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice; and
- (c) must specify the place where, and the period within which, the information or documents must be provided or produced.

(3) A supervisory authority may—

- (a) require—
 - (i) any information provided or documents produced under this paragraph to be provided or produced in such form as it may specify,
 - (ii) any information provided or document produced under this paragraph to be verified or authenticated in such manner as it may reasonably specify, and
 - (iii) that the information is to be provided to, or the documents are to be produced to, a person specified in the notice; and

(b) take copies or extracts of any document produced under this paragraph.

(4) Where a person claims a lien on a document, its production under this paragraph is without prejudice to his lien.

Search warrant

4. (1) The Magistrate may issue a search warrant under this section if satisfied on information on oath or affirmation given on behalf of a supervisory authority that there are reasonable grounds for believing that one or more of the conditions specified in subsection (2) have been satisfied.

(2) The conditions referred to in subsection (1) are—

(a) that a person has failed to fully comply with a notice of a supervisory authority issued under section 3(1) within the time period specified in the notice and that on the premises specified in the warrant—

(i) there are documents that have been required to be produced, or

(ii) there is information that has been required to be provided;

(b) that—

(i) a notice could be issued by a supervisory authority under section 3(1) against a person,

(ii) there are documents, or there is information, on the premises specified in the warrant in respect of which a notice under paragraph 3(1) could be issued, and

(iii) if a notice under section 3(1) was to be issued, it would not be fully complied with or the documents or information to which the notice related would be removed, tampered with or destroyed; or

(c) that—

(i) an offence under this Act, any other law relating to money laundering or the financing of terrorism, the Anti-money Laundering and Terrorist Financing Regulations or the ENRSP Regulations has been, is being or may be committed by a person,

(ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence, and

(iii) if a notice under section 3(1) was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.

(3) A warrant issued under this paragraph shall authorise a named representative of the supervisory authority, together with a police officer and any other person named in the warrant—

- (a) to enter the premises specified in the warrant at any time within 1 week from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

(4) Unless the Magistrate, on the application of a supervisory authority, otherwise orders, any document of which possession is taken under this paragraph may be retained—

- (a) for a period of 3 months; or
- (b) if, within a period of 3 months, proceedings for a criminal offence to which the document is relevant are commenced against any person, until the conclusion of those proceedings.

(5) In this section, “premises” includes a vehicle, vessel or aircraft.

Compliance visits

5. (1) A supervisory authority may, for the purposes of monitoring, assessing and enforcing compliance by a relevant service provider with its AML/CFT obligations—

- (a) enter and inspect any premises, whether in or outside Anguilla, owned, occupied or used by the service provider or any subsidiary or parent of the service provider;
- (b) review and inspect the business and activities of the service provider, including its policies, procedures, systems and controls;
- (c) examine and make copies of documents belonging to or in the possession or control of the service provider, or any subsidiary or parent of the service provider, that, in the opinion of a supervisory authority, are relevant to the service provider’s business or to its AML/CFT obligations; and
- (d) seek information and explanations from the officers, employees, agents and representatives of the service provider, whether orally or in writing, and whether in preparation for, during or after a compliance visit.

(2) Subject to subsection (3), a supervisory authority shall give reasonable notice to a relevant service provider of its intention to exercise its powers under subsection (1).

(3) Where it appears to a supervisory authority that the circumstances so justify, the supervisory authority may exercise its powers under subsection (1) without giving notice of its intention to do so.

(4) A relevant service provider and its subsidiaries and parents shall permit any employee of a supervisory authority, or person appointed by the supervisory authority for the purpose, to have access during reasonable business hours to any premises specified in paragraph (1)(a) to enable that person to undertake a compliance visit.

(5) A person who contravenes subsection (4) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$25,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 3 years or to a fine of \$50,000 or to both.

Privileged information

6. (1) A person shall not be required to disclose information or produce, or permit the inspection of, a document under this Schedule if the information or document is privileged material within the meaning of section 134.

(2) Notwithstanding subsection (1), a professional legal adviser may be required, pursuant to a power under this Schedule, to provide the name and address of his client.

Admissibility of statements

7. (1) Subject to subsection (2), a statement made by a person in compliance with a request made by a supervisory authority under paragraph 3 is admissible in evidence in any proceedings, provided that it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) A statement made by a person in compliance with a requirement imposed under this Schedule may only be used in evidence against him in criminal proceedings if—

- (a) that person has himself introduced the statement in evidence; or
- (b) the prosecution of that person relates to—
 - (i) a failure or refusal by that person to produce documents or give assistance in accordance with this Act,
 - (ii) an omission by that person to disclose material which should have been disclosed or the provision by that person of false or misleading information, or
 - (iii) an untruthful statement by that person.

Protection for disclosure

8. A person, including a director, officer or employee of a relevant service provider, who discloses information or produces documents to a supervisory authority, as permitted or required

by this Schedule, is deemed not to be in contravention of any law, rule of law, agreement or professional code of conduct to which that person is subject and no civil, criminal or disciplinary proceedings shall lie against him, or against the service provider, in respect thereof.

Offences

9. (1) A person is guilty of an offence if, without reasonable excuse he fails to comply with a notice issued under section 3(1).

(2) A person who, in purported compliance with a notice issued by a supervisory authority under section 3(1)—

- (a) provides information which he knows to be false or misleading in a material respect; or
- (b) recklessly provides information which is false or misleading in a material respect;

is guilty of an offence.

(3) A person who, for the purpose of obstructing or frustrating compliance with a notice issued by a supervisory authority under section 3(1) destroys, mutilates, defaces, hides or removes a document is guilty of an offence.

(4) A person who is guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term of 2 years or to a fine of \$30,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

Enforcement action

10. A supervisory authority is entitled to take enforcement action under this Schedule against a registered relevant service provider if, in the opinion of the supervisory authority, the relevant service provider—

- (a) has contravened or is in contravention of any of its AML/CFT obligations;
- (b) has failed to comply with a directive given to it by the supervisory authority under section 11;
- (c) is in breach of any term or condition of its registration;
- (d) has provided the supervisory authority with any false, inaccurate or misleading information, whether on making application for registration or subsequent to its registration;
- (e) has refused or failed to co-operate with the supervisory authority on a compliance visit under section 4;
- (f) has refused or failed to co-operate with an investigator appointed under section 12; or

- (g) is carrying on any type of relevant business without being registered for that type of relevant business under the ENRSP Regulations.

Directives

11. (1) Where a relevant supervisory authority is entitled to take enforcement action against a service provider, it may by written notice issue such directives to the relevant service provider as it considers appropriate.

(2) Without limiting subsection (1), a directive may—

- (a) require the service provider to take, or not to take, such action or measures as the supervisory authority considers appropriate;
- (b) impose a prohibition, restriction or limitation on the business or activities of the service provider;
- (c) require that any director, key employee or person having functions in relation to the service provider be removed and replaced by another person acceptable to the supervisory authority; or
- (d) require that any individual—
 - (i) not perform a specified function or functions for,
 - (ii) not engage in specified employment by,
 - (iii) not hold a specified position in the business of,the service provider.

(3) A directive issued under this section may be of unlimited duration or of a duration specified in the notice of the directive.

(4) The power to issue a directive under this section includes the power, whether on the application of the relevant service provider or on the volition of the relevant supervisory authority, to vary or withdraw any directive.

(5) A notice of a directive must—

- (a) specify the reasons for giving the directive; and
- (b) specify when the directive is to take effect.

(6) In the case of an externally regulated service provider, the Commission shall consult with the applicable external supervisor before issuing a directive to an externally regulated service provider unless the Commission considers that the circumstances otherwise justify.

(7) A service provider who, fails to comply with a directive issued under this section is guilty of an offence and is liable on summary conviction, to imprisonment for a term of 12 months or to a fine of \$25,000 or to both.

Appointment of investigator

12. (1) A supervisory authority may appoint one or more competent persons as investigators to conduct an investigation on its behalf—

- (a) with respect to a relevant service provider—
 - (i) if it appears to the supervisory authority on reasonable grounds that there are, or may be, grounds for taking enforcement action, or
 - (ii) the supervisory authority is of the opinion that it is desirable to appoint an investigator to undertake a money laundering and terrorism financing risk assessment in relation to the service provider; and
- (b) with respect to a former relevant service provider, if the supervisory authority would have been entitled to appoint an investigator under paragraph (a), but for the person ceasing to be a service provider.

(2) An investigator appointed under subsection (1) shall be appointed to investigate one or more of the following in respect of the person being investigated—

- (a) the current or past compliance of the service provider with its AML/CFT obligations;
- (b) the money laundering and terrorism financing risks to which the service provider is exposed;
- (c) the capacity and willingness of the service provider to identify, mitigate and manage the money laundering and terrorism financing risks to which the service provider is exposed; and
- (d) whether there are grounds for the taking of enforcement action against the service provider.

(3) Subject to subsection (4) and as far as reasonably required to conduct his investigation, an investigator appointed under this paragraph has the powers of the supervisory authority—

- (a) to require the provision of information or documents under section 3;
- (b) to apply to the Magistrate under section 4 for a search warrant; and
- (c) under paragraphs (a) to (d) of section 5(1).

(4) A supervisory authority may give directions to the investigator—

- (a) limiting the powers of the investigator; and
- (b) concerning any one or more of the following—
 - (i) the scope of the investigation,
 - (ii) the period for the conduct of the investigation, and

(iii) the manner in which the investigator shall report to the supervisory authority.

(5) An investigator appointed under subsection (1) may, if he considers it necessary for the purposes of his investigation, on giving written notice to the person concerned, also investigate the business of any person who is, or at any relevant time has been—

- (a) an affiliate of the person under investigation; or
- (b) a partnership of which the person under investigation is a member.

(6) An investigator shall submit a report of his investigation to the supervisory authority that appointed him.

(7) A supervisory authority may direct that the service provider pay the costs, or such part of the costs as it may specify, of an investigation conducted under this paragraph.

(8) The ENRSP Regulations may provide for—

- (a) the notice to be given to a person to be investigated under this paragraph;
- (b) the conduct of an investigation; and
- (c) the payment of remuneration to the investigator.

(9) A person who fails to provide all assistance reasonably required by an investigator appointed under this paragraph is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term of 2 years or to a fine of \$30,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

Public statements

13. (1) Subject to subsection (5), a supervisory authority may issue a public statement in such manner as it considers fit setting out enforcement action that the supervisory authority intends to take, or has taken, against a relevant service provider or a former relevant service provider.

(2) A public statement issued under subsection (1) may include such information as the supervisory authority considers appropriate, including—

- (a) the reasons for the enforcement action taken or to be taken; and
- (b) the nature of the enforcement action taken or to be taken.

(3) Where it considers it in the public interest to do so, a supervisory authority may issue a public statement in such manner as it considers fit with respect to—

- (a) any person who the supervisory authority has reasonable grounds to believe is carrying on, has carried on, intends to carry on or is likely to carry on any type of

relevant business without being registered under the ENRSP Regulations in respect of that type of relevant business; and

(b) any matter relating to the risks of money laundering or terrorist financing.

(4) Subject to subsection (5), where a public statement is to be issued under this section in relation to a relevant service provider or a former relevant service provider, the supervisory authority shall give the service provider 7 days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(5) If the supervisory authority is of the opinion that it is in the public interest that subsection (4) should not have effect or that the period referred to in that subsection should be reduced, the supervisory authority may issue the public statement without notice to the relevant service provider or a former relevant service provider or with such shorter period as it considers appropriate.

Restrictions on disclosure of information

14. (1) Subject to paragraph 15, for the purposes of this paragraph, “protected information” means information which—

- (a) relates to the business or other affairs of any person; and
- (b) is acquired by a person falling within subsection (2), for the purposes of, or in the discharge of, his or its functions under this Act or under any regulations made or Code issued under this Act.

(2) Paragraph (1)(b) applies to the following persons—

- (a) a supervisory authority;
- (b) an officer or employee of a supervisory authority;
- (c) any person acting under the authority of the service provider; and
- (d) an officer or employee of a person specified in paragraph (c).

(3) Information is not protected information—

- (a) if the information is or has been available to the public from any other source; or
- (b) where the information is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.

(4) Subject to section 6, protected information shall not be disclosed by a recipient of that information, whether the recipient of the information is a person specified in subsection (2) or a person who has directly or indirectly received the protected information from a person specified in subsection (2), without the consent of—

- (a) the person from whom he obtained the information; and

(b) if different, the person to whom it relates.

(5) For the avoidance of doubt, the Confidential Relationships Act does not apply to a service provider with respect to any protected information.

(6) A person who contravenes subsection (4) is guilty of an offence and is liable—

(a) on summary conviction, to a fine of \$10,000; or

(b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of 3 years or to both.

Gateways for the disclosure of information

15. Section 14 does not apply to a disclosure—

(a) by any person where the disclosure is—

(i) required or permitted by, and made in accordance with, an order of any Court of competent jurisdiction in Anguilla,

(ii) required or permitted by this Act or any other law,

(iii) made to the Attorney General,

(iv) made to the Reporting Authority,

(v) made to a law enforcement agency in Anguilla,

(vi) made to the Commission as the supervisory authority for regulated service providers,

(vii) made to another supervisory authority,

(viii) in the case of a disclosure that relates to an externally regulated service provider, made to the appropriate external supervisor, or

(ix) in the case of a disclosure that relates to a service provider, made to—

(A) a professional body or association, whether in or outside Anguilla, of which the service provider is a member,

(B) a supervisor or self-regulatory organisation, whether in or outside Anguilla, that has responsibility for the supervision of the service provider;

(b) by a person specified in section 14(2), where the disclosure is made to any person for the purpose of discharging any function or exercising any power under this Act or a financial services enactment, in either case, whether the function or power is of the person disclosing the information or of the supervisory authority;
or

(c) by a person, other than a supervisory authority, where the disclosure—

- (i) is made with the written consent of the supervisory authority, and
- (ii) could lawfully have been made by the supervisory authority.”.

Citation

24. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2013.



Leroy C. Rogers
Deputy Speaker

Passed by the House of Assembly this 20th day of September, 2013.



Carmen A. Richardson
Clerk of the House of Assembly
