

**Regulations of Anguilla: 38/2013**

Gazette Dated: 16 October, 2013

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

**EXTERNALLY AND NON-REGULATED SERVICE PROVIDERS REGULATIONS, 2013**

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Regulations made by the Governor in Council under section 152F of the Proceeds of Crime Act, R.S.A. c. P98.

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PART 1  
PRELIMINARY PROVISIONS

**Interpretation**

1. In these Regulations—

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

“AML/CFT obligation” has the meaning specified in the AML/CFT Regulations;

“AML/CFT Regulations” means the Regulations issued under section 158 of the Act;

“ERSP Register” means the register of externally regulated service providers established and kept under section 2

“NRSP Register” means the register of non-regulated service providers established and kept under section 2;

“NRSP Supervisor” means the person or body designated in the AML/CFT Regulations as the supervisory authority for non-regulated service providers or, where more than two supervisory authorities are designated, each supervisory authority;

“registered service provider” means a service provider registered under section 4;

“relevant business” has the meaning specified in the AML/CFT Regulations;

“senior officer”, in relation to a service provider, means—

- (a) the service provider’s money laundering compliance officer;
- (b) the service provider’s money laundering reporting officer;
- (c) the chief executive of the service provider, or an individual who occupies an equivalent position under a different name;
- (d) an individual employed by the service provider who has responsibilities that include direct involvement in the service provider’s management or decision-making process at a senior level;

“significant owner”, in relation to a service provider, means a person who, whether alone or acting together with one or more associates—

- (a) owns, whether legally or beneficially, a 15% or greater interest in the service provider or its parent;
- (b) has the power, directly or indirectly, to exercise, or control the exercise of, 15% or more of the voting rights in the service provider, or its parent; or
- (c) has the power to appoint or remove one or more directors of the service provider; and

“supervisory authority”, in relation to a service provider, means—

- (a) in the case of the ERSP Register and externally regulated service providers, the Commission; and

- (b) in the case of the NRSP Register and non-regulated service providers, the NRSP Supervisor responsible for the AML/CFT supervision of the service provider;

## PART 2

### REGISTRATION AND REPORTING OBLIGATIONS

#### Registers of externally regulated and non-regulated service providers

2. (1) The Commission shall establish and keep a register of externally regulated service providers and the NRSP Supervisor shall establish and keep a register of non-regulated service providers.

(2) The ERSP and NRSP Registers shall contain the following information in respect of each service provider registered in accordance with section 4—

- (a) in the case of a service provider that is a corporate body, the name, country of incorporation, date of incorporation and registered office of the service provider;
- (b) in the case of a service provider that is not a corporate body, the name and address of the service provider;
- (c) the principle business address of the service provider in Anguilla and the service provider's telephone number and e-mail address, if any;
- (d) in the case of the ERSP Register—
  - (i) the type of licence held by the externally regulated service provider; and
  - (ii) the name and address of the applicable external supervisor;
- (e) in the case of the NSRP Register, the relevant business for which the non-regulated service provider is registered;
- (f) the date of registration and, if applicable, de-registration of the service provider; and
- (g) such other information as the supervisory authority considers appropriate.

(3) The ERSP Register, the NRSP Register and the information contained in any document filed with a supervisory authority, may be kept in such manner as the supervisory authority considers appropriate, including either wholly or partly, by means of a device or facility that—

- (a) records or stores information magnetically, electronically or by other means; and
- (b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

#### Application to register

3. (1) In accordance with section 152E of the Act, a person who carries on, or intends to carry on, a relevant business in or from within Anguilla shall make an application to be registered for that type of relevant business.

(2) Application may be made—

- (a) to the Commission to register an externally regulated service provider; or

- (b) to the NRSP Supervisor to register a non-regulated service provider.
- (3) An application under subsection (2) shall—
  - (a) be in writing and in the form specified by the supervisory authority;
  - (b) be signed by the service provider applying for registration or by a person acting on the applicant's behalf; and
  - (c) be accompanied by such documents or information as may be specified by these Regulations or on the application form.
- (4) A supervisory authority may require an applicant to—
  - (a) provide it with such documents and information, in addition to those specified in paragraph (3)(c), as it reasonably requires to determine the application and any such information shall be in such form as the supervisory authority may require; and
  - (b) verify any document and information provided in support of an application in such manner as the supervisory authority may specify.
- (5) If, before the registration of an externally regulated or non-regulated service provider—
  - (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the supervisory authority in connection with the application, or
  - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall, as soon as reasonably practicable, give the supervisory authority written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

#### **Registration**

4. Following receipt of an application for registration under section 3(2) and any additional documents or information that it has required under section 3(4), the supervisory authority shall—

- (a) subject to section 5(2), register the service provider in the appropriate Register and provide the service provider with written notice of its registration as an externally regulated service provider or as a non-regulated service provider, as the case may be; or
- (b) refuse the application under section 5.

#### **Refusal of application to register**

5. (1) A supervisory authority may refuse an application for registration if—

- (a) the application does not comply with section 3(3);
- (b) the applicant fails to provide any information or documents required by the supervisory authority under section 3(4);
- (c) the supervisory authority is of the opinion that, in the case of an applicant for registration as a non-regulated service provider, the applicant does not, or does not intend to, carry on the relevant business for which it seeks registration;

- (d) any of the applicant's directors, senior officers or owners, or their associates, have committed an offence which constitutes criminal conduct;
  - (e) the applicant, having previously been registered under these Regulations, has been de-registered under section 6.
- (2) A supervisory authority shall refuse an application for registration if it is of the opinion that—
- (a) the applicant does not, or on registration will not, have the capacity or willingness to comply with its AML/CFT obligations or to identify, mitigate and manage the money laundering and terrorism financing risks to which it is exposed;
  - (b) the service provider, or its business, represents a significant money laundering or terrorist financing risk; or
  - (c) it is contrary to the public interest for the applicant to be registered.

(3) If a supervisory authority refuses an application for registration, it shall send the applicant a written notice of refusal, stating the grounds for its refusal.

#### **De-registration**

6. (1) A supervisory authority may de-register an externally regulated or non-regulated service provider if—

- (a) subject to subsection (2), the service provider applies to be de-registered; or
- (b) in the opinion of the supervisory authority—
  - (i) the service provider is in contravention of, or has contravened, any of its AML/CFT obligations,
  - (ii) the service provider does not have the capacity or willingness to comply with its AML/CFT obligations or to identify, mitigate and manage the money laundering and terrorism financing risks to which the service provider is exposed,
  - (iii) the service provider, or its business, represents a significant money laundering or terrorist financing risk,
  - (iv) any of the service provider's directors, senior officers or owners, or their associates, have carried on criminal conduct, or
  - (v) it is in the public interest for the service provider to be de-registered.

(2) A supervisory authority shall not de-register a service provider under paragraph (1)(a) if the supervisory authority is of the opinion that the de-registration of the service provider would hinder the supervisory authority in the exercise of its functions.

(3) Subject to subsection (4), before de-registering a service provider under paragraph (1)(b), the supervisory authority shall give written notice to the service provider stating—

- (a) the grounds upon which it intends to de-register the service provider; and
- (b) that unless the service provider, by written notice, shows good reason why it should not be de-registered, it will be de-registered on a date not less than 14 days after the date of the notice.

(4) If, in the case of a non-regulated service provider, it is not practicable for the NRSP Supervisor to give notice to the service provider under subsection (3), it may de-register the non-regulated service provider without giving such notice.

(5) Where a supervisory authority de-registers a service provider, it shall mark the name of the service provider in the ERSP Register or the NRSP Register, as the case may be, as de-registered, showing the date of its de-registration.

#### **Notification of changes in directors and senior officers**

7. (1) A registered service provider shall provide the supervisory authority with written notice of any change in its directors (in the case of an undertaking) or senior officers, whether as a result of a director or senior officer ceasing to hold office or the appointment of a new director or senior officer.

(2) A written notice under subsection (1) shall—

- (a) specify the date of the change;
- (b) include the full name of the director or senior officer who has ceased to be, or has been appointed as, a director or senior officer; and
- (c) be provided to the supervisory authority within 14 days of—
  - (i) the change occurring, in the case of the appointment or resignation of a director or senior officer, or
  - (ii) the service provider first becoming aware of the change, in the case of the death of a director or senior officer.

(3) A registered service provider that fails to provide written notice of a change in its directors or senior officers in accordance with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding \$25,000.

#### **Notification of change in significant owners**

8. (1) A registered service provider shall provide the supervisory authority with written notice of any change in its significant owners, whether as a result of a person becoming a significant owner or ceasing to be a significant owner.

(2) A written notice under subsection (1) shall—

- (a) specify the date of the change;
- (b) provide details of the identity of the new or former significant owner and the nature of the significant owner's interest in, or control of, the service provider;
- (c) be provided to the supervisory authority within 14 days of the service provider first becoming aware of the change.

(3) A registered service provider that fails to provide written notice of a change in its significant owners in accordance with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding \$25,000.

**Notification of change in information required to be registered**

9. (1) A registered service provider shall provide the supervisory authority with written notice of any change in the information required to be registered under section 2(2)(a), (b) and (c) and, in the case of an externally regulated service provider, section 2(2)(d).

(2) A written notice under subsection (1) shall—

- (a) specify the date of the change;
- (b) set out the details of the change;
- (c) be provided to the supervisory authority within 14 days of the service provider first becoming aware of the change.

(3) A registered service provider that fails to provide written notice of a change in its registered information in accordance with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding \$25,000.

**PART 3**

**ADMINISTRATIVE PENALTIES**

**Interpretation for this Part**

10. (1) For the purposes of this Part—

“disciplinary violation” means a contravention of an AML/CFT obligation;

“late payment penalty” means an administrative penalty imposed in respect of the failure of a service provider to pay the annual fee payable under the Act on or before the date on which the fee is due for payment.

(2) For the purposes of determining whether a disciplinary violation has been committed, the annual fee payable under these Regulations is deemed not to have been paid until it has been paid in full.

(3) The imposition of an administrative penalty becomes final on the earliest of—

- (a) the payment by the service provider of the penalty;
- (b) the date when, in accordance with section 14, the service provider is considered to have committed the disciplinary violation; or
- (c) the dismissal of any appeal of the service provider, provided that the time for any further appeal has expired.

**Supervisory authority may take disciplinary action**

11. (1) A supervisory authority may take disciplinary action against a service provider under this section where it is satisfied that the service provider has committed a disciplinary violation.

(2) A supervisory authority takes disciplinary action against a service provider by imposing an administrative penalty on the service provider.

(3) Disciplinary action may not be taken against a service provider in respect of a disciplinary violation committed more than 2 years prior to the date upon which the supervisory authority sends a notice to the service provider under section 11 or 13.



(4) If the conduct or omission that constitutes a disciplinary violation also constitutes an offence—

- (a) the taking of disciplinary action against a service provider does not prevent the service provider being also prosecuted for the offence; and
- (b) the prosecution of a service provider for the offence does not prevent the taking of disciplinary action against the service provider.

**Notice of intention to take disciplinary action**

12. (1) Where it intends to take disciplinary action against a service provider, other than by imposing a late payment penalty on the service provider, a supervisory authority shall send a notice of its intention to the service provider—

- (a) specifying—
  - (i) the alleged disciplinary violation and the relevant facts surrounding the violation, and
  - (ii) the amount of the penalty that it intends to impose; and
- (b) advising the service provider of his right to make written representations to the supervisory authority in accordance with subsection (2).

(2) A service provider who receives a notice under subsection (1) may, within 28 days of the date upon which he receives the notice, send written representations to the supervisory authority—

- (a) denying that he has committed the alleged disciplinary violation or disputing the facts of the alleged disciplinary violation; or
- (b) providing reasons that he considers justify the imposition of a lower penalty.

**Supervisory authority may take disciplinary action**

13. (1) After the expiration of 28 days from the date that it sent a notice under section 11 to a service provider, a supervisory authority may take disciplinary action against that service provider by sending him a penalty notice stating—

- (a) the disciplinary violation in respect of which the notice is issued;
- (b) the date on which notice of intention to take disciplinary action in respect of that violation was sent to the service provider;
- (c) the amount of the administrative penalty imposed;
- (d) a date, not less than 28 days after the date of the penalty notice, by which the administrative penalty shall be paid to the supervisory authority; and
- (e) that if the service provider does not pay the administrative penalty or exercise his rights of appeal under section 152I of the Act, on or before the date referred to in paragraph (d), the service provider will be considered to have committed the violation and be liable for the penalty set out in the notice.

(2) The penalty imposed in a penalty notice shall not exceed the amount specified in the notice of intention sent under section 11.

(3) Before taking disciplinary action against a service provider under subsection (1), a supervisory authority shall consider any written representations that it has received from the service provider and, where it receives such representations, it must provide reasons for the action that it takes.

(4) A service provider who receives a penalty notice under subsection (1) shall pay the penalty stated to the supervisory authority, or appeal the imposition of the penalty under the Act, on or before the date specified in the notice.

#### **Late payment penalties**

14. (1) Where a supervisory authority decides to take disciplinary action against a service provider by imposing a late payment penalty on the service provider, it shall send the service provider a penalty notice stating—

- (a) the fee or charge in respect of which the late payment penalty is being imposed; and
- (b) the amount of the penalty.

(2) A service provider who receives a penalty notice under subsection (1) shall pay the late payment penalty stated in the notice to the supervisory authority, or appeal the imposition of the penalty under section 152I of the Act, within 28 days of the date of the penalty notice.

#### **Date service provider considered to commit disciplinary violation**

15. (1) If a service provider pays an administrative penalty imposed on him under section 12 or 13 on or before the last date for payment of the penalty, the service provider is considered to have committed the violation and the disciplinary action is over.

(2) A service provider who neither pays an administrative penalty imposed on him under section 12 or 13 nor appeals the imposition of the administrative penalty, on or before the last date for payment of the penalty, is considered to have committed the disciplinary violation and is liable for the administrative penalty.

#### **Fixing of penalties**

16. (1) Where a supervisory authority decides to impose an administrative penalty on a service provider, other than a late payment penalty, it shall, after taking account of the factors specified in section 16, fix the amount of the administrative penalty in an amount not exceeding \$100,000.

(2) Where a supervisory authority decides to impose a late payment penalty on a service provider, the penalty shall be calculated as follows—

- (a) where the fee or charge is paid 1-30 days after the due date, 10% of the annual fee payable, subject to a minimum of \$20;
- (b) for each additional period of 30 days, or any part, during which the fee or charge remains unpaid, 10% of the annual fee payable, subject to a minimum of \$20.

(3) The amounts payable under paragraphs 2(a) and (b) are cumulative, but may not exceed 100% of the annual fee payable.

#### **Factors to be considered by supervisory authority**

17. In determining the administrative penalty to be imposed on a service provider, other than a late payment penalty, the supervisory authority—

- (a) shall take into account the following factors—

- (i) the nature and seriousness of the contravention committed by the service provider,
  - (ii) whether the service provider has previously committed a disciplinary violation and if so, the number and seriousness of the service provider's previous disciplinary violations,
  - (iii) whether the disciplinary violation was deliberate or reckless or caused by the negligence of the service provider,
  - (iv) whether any loss or damage has been sustained by third parties as a result of the disciplinary violation,
  - (v) whether there has been any gain to the service provider as a result of the disciplinary violation, and
  - (vi) the ability of the service provider to pay the penalty; and
- (b) may take into account such other matters as it considers appropriate.

#### PART 4 MISCELLANEOUS

##### **Consultation with external supervisor**

18. The supervisory authority shall consult with the applicable external supervisor before—
- (a) registering or refusing to register an applicant for registration as an externally regulated service provider;
  - (b) de-registering a service provider as an externally regulated service provider; or
  - (c) imposing an administrative penalty, other than a late payment penalty, on an externally regulated service provider.

##### **Fees**

19. (1) A service provider shall pay to the supervisory authority the following fees—
- (a) a non-refundable application fee on submitting an application for registration under section 4;
  - (b) a registration fee on registration under section 4; and
  - (c) an annual fee on each anniversary of its registration.
- (2) The application, registration and annual fees shall be set by the supervisory authority and different fee levels may be set for different types, categories and descriptions of service provider.
- (3) In determining the fees payable by different types, categories and descriptions of service provider, the supervisory authority shall have regard to the following criteria—
- (a) the fee chargeable shall take account of the estimated average cost of supervising service providers of the particular type, category or description to which the fee will apply;
  - (b) the fees should be set with the objective that the total fees paid to a supervisory authority are sufficient—

- (i) to cover the costs to the supervisory authority of discharging its functions under the Act and these Regulations; and
- (ii) to enable the supervisory authority to accumulate a reserve sufficient to cover the costs of ad hoc investigations and other enforcement action that may be required from time to time.

**Offence, false and misleading information**

20. A person who, with intent to deceive or for any purpose of these Regulations—

- (a) provides any information, makes any representation or submits any document or return that he knows to be false or materially misleading or does not believe to be true; or
- (b) recklessly provides any information, makes any representation or submits any document or return that is false or materially misleading;

is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$25,000 or to both.

**Transitional provisions**

21. A person who, at the commencement of these Regulations, is an externally regulated service provider or a non-regulated service provider does not contravene section 152E(1) of the Act if, within 90 days of the date when these Regulations come into force, it—

- (a) is registered under section 4(a); or
- (b) has made an application in compliance with section 3 which has not been refused.

**Citation and commencement**

22. These Regulations may be cited as the Externally and Non-Regulated Service Providers Regulations, 2013 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 23<sup>rd</sup> day of September, 2013

Christina Scott  
GOVERNOR OF ANGUILLA