

**REGULATIONS OF ANGUILLA 21/2006**Gazette dated: 23<sup>rd</sup> November, 2006

MONEY LAUNDERING REPORTING AUTHORITY ACT, R.S.A. c. M100

**ANTI-MONEY LAUNDERING REGULATIONS, 2006**

Regulations made by the Governor under sections 1 and 3 of the Money Laundering Reporting Authority Act, R.S.A. c. M100, section 34 of the Proceeds of Criminal Conduct Act, R.S.A. c. P100 and section 33 of the Drugs Trafficking Offences Act, R.S.A. c. D50.

**Interpretation**

1. (1) In these Regulations—

“Act” means the Money Laundering Reporting Authority Act;

“applicant for business” and “applicant” means a person seeking to form a business relationship, or to carry out a one-off transaction, with a regulated person;

“attorney-at-law” means an attorney admitted to practise before the Eastern Caribbean Supreme Court in Anguilla;

“business relationship” means an arrangement between a regulated person and any other person or persons, the purpose of which is to facilitate the carrying out of relevant financial business on a regular basis;

“cash” means notes, coins or travellers’ cheques in any currency;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

“Companies Registry” means the Companies Registry within the meaning of the Companies Registry Act;

“dollar” and “\$” means Eastern Caribbean dollar;

“established business relationship” means a business relationship in respect of which the regulated person has obtained satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;

“foreign regulated person” means a person—

- (a) that is incorporated in, or, if it is not a corporate body, has its principal place of business in, a jurisdiction outside Anguilla (its “home jurisdiction”);
- (b) that carries on business outside Anguilla that, if carried on in Anguilla, would be relevant financial business within the meaning of section 3(1)(a) to (h);
- (c) that is subject to legislation in its home jurisdiction that, in respect of the business specified in paragraph (b), is in the opinion of the Reporting Authority as per Appendix B of the Guidance Notes at least equivalent to these Regulations; and

(d) that has been approved by the Commission;

“Guidance Notes” means the Guidance Notes issued under section 4 of the Act;

“high value dealer” means a person who carries on an activity specified in section 3(1)(n);

“investment business” has the meaning set out in section 3(2);

“Money Laundering Reporting Officer” means the person appointed by a regulated person under section 8(1);

“one off transaction” means a transaction carried out between a regulated person and any other person or persons—

(a) that constitutes relevant financial business; and

(b) that is carried out other than in the course of an established business relationship;

“overseas agent” means a foreign regulated person who has been approved by the Commission for the purposes of filing documents with the Companies Registry in electronic form;

“regulated licensee” means a person licensed or registered to carry on relevant financial business within the meaning of section 3(1)(a) to (j);

“regulated person” means—

(a) a regulated licensee or any other person carrying on a relevant financial business in or from within Anguilla; or

(b) an attorney-at-law engaged in trust business solely in the practice of law;

“relevant financial business” has the meaning set out in section 3(1);

“Reporting Authority” means the Reporting Authority constituted under section 2 of the Act.

(2) Words and expressions defined in the Act and in the Proceeds of Criminal Conduct Act have the same meaning in these Regulations.

### **Prescribed provisions**

2. (1) The following provisions are prescribed for the purposes of paragraph (d) of the definition of “money laundering” in section 1 of the Act—

(a) article 9 of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002; and

(b) section 14 of the Criminal Justice (International Co-operation) (Anguilla) Act.

(2) For the purposes of section 34 of the Proceeds of Criminal Conduct Act, and section 33 of the Drugs Trafficking Offences Act, “financial institution” means a regulated licensee or a person carrying on relevant financial business within the meaning of section 3(1)(m).

### **Meaning of “relevant financial business” and “investment business”**

3. (1) In these Regulations, “relevant financial business” means—

(a) banking business as defined in the Banking Act, 2005;

- (b) offshore banking business as defined in the Trust Companies and Offshore Banking Act;
  - (c) trust business as defined in the Trust Companies and Offshore Banking Act;
  - (d) company management business as defined in the Company Management Act;
  - (e) insurance business as defined in the Insurance Act;
  - (f) intermediary business as defined in the Insurance Act;
  - (g) acting as the administrator or manager of a mutual fund within the meaning of the Mutual Funds Act;
  - (h) carrying on any business, or undertaking any activity, for which a licence is required under the Securities Act;
  - (i) acting as a credit union under the Co-operatives Societies Act;
  - (j) acting as a friendly society under the Friendly Societies Act;
  - (k) being a promoter of a mutual fund within the meaning of the Mutual Funds Act;
  - (l) investment business as defined in subsection (2);
  - (m) the business of—
    - (i) forming limited partnerships,
    - (ii) providing the registered office for limited partnerships,
    - (iii) operating a *bureaux de change*,
    - (iv) providing cheque cashing services,
    - (v) transmitting or receiving funds by wire or other electronic means,
    - (vi) lending,
    - (vii) financial leasing,
    - (viii) forming foundations, or
    - (ix) forming protected cell companies and protected cell accounts;
  - (n) the activity of dealing in goods of any description by way of business whenever a transaction involves accepting a total cash payment of \$50,000 or more, or the equivalent in another currency.
- (2) In these Regulations, “investment business” means the business of—
- (a) trading for one’s own account or for the account of customers in—
    - (i) money market instruments,
    - (ii) foreign exchange,

- (iii) financial futures and options,
- (iv) exchange and interest rate instruments, or
- (v) transferable securities;
- (b) participation in securities issues and the provision of services related to such issues;
- (c) the provision of advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
- (d) money broking;
- (e) portfolio management and advice;
- (f) the safekeeping and administration of securities;

but does not include carrying on any business, or undertaking any activity, for which a licence is required under the Securities Act.

#### **Identification procedures to be established and maintained**

4. (1) Subject to sections 5 and 6, a regulated person must establish and maintain identification procedures complying with subsections (2), (3) and (4) and the requirements contained in section 3 of the Guidance Notes that, as soon as reasonably practicable after contact is first made between the regulated person and an applicant for business, require—

- (a) the applicant to produce satisfactory evidence of his identity; or
- (b) the regulated person to take certain specified measures designed to obtain satisfactory evidence of the applicant's identity.

(2) The procedures established and maintained under subsection (1) must—

- (a) take into account the greater potential for money laundering which arises when the applicant for business is not physically present when being identified;
- (b) require that where satisfactory evidence of identity is not obtained, the business relationship or the one-off transaction must not proceed any further; and
- (c) require that where the applicant acts or appears to act for another person, reasonable measures must be taken for the purposes of establishing the identity of that other person.

(3) For the purposes of this section, satisfactory evidence of identity is evidence which is reasonably capable of establishing and, to the satisfaction of the person who obtains the evidence, does establish, that the applicant for business is the person he claims to be.

(4) Without limiting subsection (3), the evidence of identity obtained under a regulated person's identification procedures must include evidence of—

- (a) the full name of the applicant, together with any other names used by the applicant;
- (b) the physical address of the applicant; and
- (c) other applicable information covered under section 3 of the Guidance Notes.

**Introduced business**

5. (1) Subsections (2), (3) and (4) apply where an applicant for business is introduced to a regulated person by a third party (“the introducer”) who is—

- (a) a regulated licensee;
- (b) a foreign regulated person; or
- (c) an overseas agent;

unless any person handling the transaction on behalf of the regulated person knows or suspects that the transaction involves money laundering.

(2) Where this subsection applies, a written assurance from the introducer that evidence of the identity of the applicant for business has been obtained and recorded in accordance with procedures maintained by the introducer which comply with these Regulations or which comply with regulations equivalent to these Regulations may be accepted by the regulated person concerned as satisfactory evidence of the identity of the applicant.

(3) Where the regulated person relies on evidence of identity obtained and recorded by an introducer, it should be capable of being retrieved or reproduced in legible and useable form and of being made available to the regulated person within a reasonable period of time.

(4) Nothing in this section shall substitute for or take the place of a regulated person’s ultimate responsibility for compliance with sections 4 and 7.

**Other exceptions to the identification procedure**

6. (1) A regulated person is not required to obtain evidence of the identity of an applicant for business where the regulated person has reasonable grounds for believing that the applicant is—

- (a) a regulated licensee; or
- (b) a foreign regulated person;

unless any person handling the transaction on behalf of the regulated person to whom the application for business is made knows or suspects that the applicant is engaged in money laundering.

(2) In respect of a one-off transaction, a regulated person is not required to obtain evidence of the identity of an applicant for business where the amount to be paid by or to the applicant for business is less than \$25,000 or the equivalent in another currency unless—

- (a) there are reasonable grounds for believing, whether at the outset or subsequently—
  - (i) that the transaction is linked to one or more other transactions, and
  - (ii) that the total amount to be paid by or to the applicant for business in respect of all the linked transactions is \$25,000 or more; or
- (b) any person handling the transaction on behalf of the regulated person knows or suspects that the transaction involves money laundering.

**Records to be kept by regulated person**

7. (1) A regulated person must keep, for at least the minimum retention period—

- (a) identification records complying with subsection (3);

- (b) transaction records complying with subsection (4);
- (c) registers in writing of—
  - (i) all reports made by the regulated person to the Reporting Authority, and
  - (ii) all enquiries relating to money laundering made to it by the Authority;
- (d) records of all training given to employees in accordance with section 9; and
- (e) such other records as may be required by the Guidance Notes.

(2) The records required to be kept under subsection (1) must be kept in such manner as will enable them to be retrieved or reproduced in legible and useable form within a reasonable period of time and must comply with any requirements contained in the Guidance Notes.

(3) Where a regulated person obtains evidence of the identity of an applicant for business, whether or not a business relationship is eventually established or a one-off transaction carried out, the regulated person must keep—

- (a) the evidence, or a copy of the evidence, obtained; or
- (b) a record indicating the nature of the evidence, providing such information as will enable a copy of it to be obtained.

(4) A regulated person must keep a record of each transaction that he carries out in the course of his relevant financial business containing sufficient details to enable an investigation into suspected money laundering to be undertaken.

(5) For the purposes of subsection (1), the minimum retention period is—

- (a) in the case of a record kept under subsection (3), the period of 6 years from the last occurring of the following events—
  - (i) the ending of the business relationship between the regulated person and the other person, or
  - (ii) the carrying out of the last transaction between the regulated person and the other person; and
- (b) in the case of a record kept under subsection (4), the period of 6 years from the date upon which the transaction was completed.

(6) Notwithstanding this section, if a regulated person is so advised by a police officer or by the Authority or believes that a record is required for the purposes of a money laundering investigation, he must keep the record until the last occurring of the following events—

- (a) the expiration of the minimum retention period; or
- (b) the receipt of a written notice issued by a police officer or the Authority that the record is no longer required for the investigation.

#### **Internal reporting procedures**

**8.** (1) A regulated person must appoint a fit and proper individual approved by the Commission as its Money Laundering Reporting Officer.

(2) A regulated person must establish and maintain internal reporting procedures that require that—

- (a) where information or any other matter comes to the attention of any employee of the regulated person in the course of the regulated person's relevant financial business, as a result of which the employee knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering, that employee must, as soon as reasonably practicable after that information or other matter comes to his attention, disclose it to the Money Laundering Reporting Officer;
- (b) any disclosure made under paragraph (a) must be considered by the Money Laundering Reporting Officer in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion or such reasonable grounds for knowledge or suspicion;
- (c) permitting the Money Laundering Reporting Officer to have reasonable access to any other information which may be of assistance to him in considering the report; and
- (d) if the Money Laundering Reporting Officer determines that the information or other matter contained in the report does give rise to a knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that another person is engaged in money laundering, he must disclose that information or matter to the Reporting Authority.

(3) The internal reporting procedures required to be kept under this section must comply with the requirements contained in the Guidance Notes.

(4) A regulated person must not carry on relevant financial business unless he is in compliance with this section.

(5) Subsections (1) and (2) do not apply to an individual who, in the course of relevant financial business, does not employ or act in association with any other person.

(6) Nothing in subsection (2) applies to information or any other matter that comes to a professional legal advisor where that information or other matter comes to him in privileged circumstances.

(7) For the purposes of subsection (5), information or other matter comes to a professional legal advisor in privileged circumstances if it is communicated or given to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to his client;
- (b) by, or by a representative of, a person seeking legal advice from the advisor; or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings;

unless the information or other matter is communicated or given with the intention of furthering a criminal purpose.

### **Training procedures**

9. (1) A regulated person must take appropriate measures for the purpose of making all relevant employees aware—

- (a) of the Proceeds of Criminal Conduct Act, the Drugs Trafficking Offences Act, sections 13 and 14 of the Criminal Justice (International Co-operation) (Anguilla) Act, the Act, these

Regulations, the Guidance Notes, any guidance issued by the Authority and any relevant supervisory or regulatory directions or guidance which apply to that person; and

- (b) of the procedures it maintains in compliance with the duties imposed under these Regulations.

(2) A regulated person must provide all relevant employees with appropriate training in the recognition and handling of transactions carried out by or on behalf of any person who is, or appears to be, engaged in money laundering.

(3) Training under this section shall, in addition, be given to all new relevant employees as soon as practicable after their appointment.

(4) For the purposes of this section, an employee is a relevant employee if, at any time in the course of his duties, he has, or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering.

(5) A regulated person must not carry on relevant financial business unless he is in compliance with this section.

(6) The training procedures required to be maintained under this section must comply with any requirements contained in the Guidance Notes.

#### **Offences**

**10.** (1) A regulated person who contravenes section 4(1), 7(1), 7(2), 8(1), 8(2), 8(3), 8(4), 9(1), 9(2), 9(3), 9(5) or 9(6) commits an offence.

(2) In proceedings against a person for an offence under subsection (1), it shall be a defence for the person to prove that he took all reasonable steps to comply with the requirements of the section that he is alleged to have contravened.

#### **Status of Guidance Notes**

**11.** (1) A regulated person shall comply with any provision of the Guidance Notes that is stated to be a requirement for the purposes of these Regulations.

(2) Without prejudice to subsection (1), in determining whether a person has complied with these Regulations, the Court may take account of—

- (a) any guidance issued by the Authority, whether or not contained in the Guidance Notes; and
- (b) any relevant supervisory or regulatory directions or guidance which apply to that person.

#### **Pre-existing business relationships**

**12.** (1) In this section, “pre-existing business relationship” means a business relationship formed by a regulated person before the 16th day of October, 2000.

(2) The Guidance Notes may specify requirements, or provide guidance, in respect of the identification evidence to be obtained with respect to pre-existing business relationships.

(3) Notwithstanding sections 3 to 5, a regulated person is not required to maintain procedures for obtaining evidence as to the identity of a person with whom a pre-existing business relationship has been formed except as required by the Guidance Notes.

**Citation and commencement**

13. These Regulations may be cited as the Anti-Money Laundering Regulations, 2006 and come into force on the day they are published in the *Gazette*.

**Anti-Money Laundering Regulations revoked**

14. The Anti-Money Laundering Regulations, R.R.A. M100-1 is revoked.

Made by the Governor this 20<sup>th</sup> day of November, 2006.

STANLEY EVERTON REID  
ACTING GOVERNOR OF ANGUILLA