
ANGUILLA FINANCIAL SERVICES COMMISSION



**ANGUILLA
GUIDANCE NOTES
ON
THE PREVENTION OF MONEY LAUNDERING**

**Issued
September 2007**

ANGUILLA FINANCIAL SERVICES COMMISSION

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ANGUILLA
GUIDANCE NOTES
ON
THE PREVENTION OF MONEY LAUNDERING

Financial Services Commission
The Secretariat
The Valley
Anguilla

Guidance Notes on the Prevention of Money Laundering

Guidance Notes issued by the Governor under section 4 of the Money Laundering Reporting Authority Act, following consultation by the Anguilla Financial Services Commission with the Anguilla Financial Services Association and the Eastern Caribbean Central Bank, for the purpose of giving practical guidance with respect to Anti-Money Laundering Regulations, R.R.A. M100-2.

Dated this 24th day of July, 2007

Andrew Neil George
Governor of Anguilla

PART 1

INTRODUCTION

1. INTRODUCTION

1.01 WHAT IS MONEY LAUNDERING

Money laundering is the process through which criminals conceal the true origin and ownership of the proceeds of criminal activities and filter those proceeds into the legitimate financial system. If undertaken successfully, it allows them to maintain control over those proceeds and to provide a legitimate cover for their source of income. Money laundering is a global phenomenon that affects all countries to varying degrees. Failure to prevent money laundering allows criminals to benefit from their actions, thus making crime a more attractive proposition.

1.02 THE NEED TO COMBAT MONEY LAUNDERING

In recent years it has become increasingly recognised that if the fight against crime is to succeed criminals must be prevented, whenever possible, from legitimising the proceeds of their criminal activities by converting “dirty” funds to ‘clean’ funds.

The ability to launder the proceeds of criminal activity through financial systems is vital to the success of criminal operations. The unchecked use of financial systems for money laundering purposes has the potential to undermine individual financial institutions and, ultimately, the entire financial sector. The increased integration of the world's financial systems and the removal of barriers to the free movement of capital, have both enhanced the ease with which criminal money can be laundered and complicated the tracing process.

It is often thought that money laundering is associated solely with banks, other credit institutions and bureaux de change. Whilst the traditional banking activities of deposit taking, money transfer systems and lending do offer a vital laundering mechanism, particularly in the initial conversion from cash, it should be recognised that products and services offered by other types of financial and non-financial sector businesses are also attractive to the launderer. The sophisticated launderer often involves many other unwitting accomplices such as:

- trust companies

- company formation agents and managers
- stockbrokers
- fund managers
- insurance companies and brokers
- financial intermediaries, accountants and lawyers
- surveyors and real estate agents
- casinos
- dealers in precious metals and bullion
- antique dealers, car dealers and others selling high value commodities and luxury goods

It is important, therefore, that all businesses in Anguilla, but especially those operating within the financial services sector, understand the nature of money laundering and take measures to protect themselves, as far as possible, from becoming involved. If a business becomes involved in a money laundering scandal, the consequences can be very serious. It will risk prosecution and the loss of its reputation. Furthermore, the reputation of Anguilla as a financial services centre could be seriously damaged.

1.03 STAGES OF MONEY LAUNDERING

Although many methods are used to launder money, the money laundering process is accomplished in three stages. Although the stages occur in sequence they often overlap.

(a) **Placement** is the physical disposal of criminal proceeds. In the case of drug trafficking and many other serious crimes, the proceeds take the form of cash which must somehow be placed into the financial system. Placement may, for example, be achieved by any of the following methods:

- the payment of cash into a bank or other deposit taking institution (often with staff complicity or mixed with legitimate funds) or to a professional intermediary such as an accountant or lawyer (for payment into the professional's client account);
- the physical movement of cash between jurisdictions for payment into a foreign bank account;
- the making of loans in cash to businesses which seem to be legitimate or are connected with legitimate businesses;
- the purchase of high value items or services.

(b) **Layering** is the separation of criminal proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity. Layering may, for example, be achieved by:

- rapid and frequent transfers (often wire transfers) of funds between deposit taking institutions and jurisdictions;
- the switching of funds through a network of legitimate businesses and shell companies, usually across several jurisdictions;
- the resale of goods and assets.

(c) **Integration** is the provision of apparent legitimacy to the proceeds of crime. If the layering process has succeeded, integration places the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds. Integration may, for example be achieved by:

- the repayment of false (non existent) loans or the settlement of false invoices;
- the derivation of income or capital from property or apparently legitimate business assets.

Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid and where his activities are therefore more susceptible to recognition, specifically:

- the entry of cash into the financial system;
- cross-border movements of cash;
- transfers within and from the financial system;
- the acquisition of financial assets;
- the incorporation of companies and the formation of trusts; and
- the establishment of financial vehicles (e.g. ostensibly pooled investment funds).

Additional vigilance is required by financial institutions and their employees at these points, although a request by a client for a financial institution to undertake or assist him with the above activities does not, of itself, necessarily constitute a ground for suspicion.

1.04 VULNERABILITY OF FINANCIAL SECTOR BUSINESS TO MONEY LAUNDERING

Historically, efforts to combat money laundering have concentrated on the deposit-taking procedures of financial sector businesses where the launderer's activities are most susceptible to recognition. In response, criminals have sought other means to convert illegally earned cash or to mix it with legitimate cash earnings before it enters the financial system, making it harder to detect at the placement stage. It must also be emphasized that there are many crimes (particularly the more sophisticated ones) where cash is not involved.

Financial institutions should consider the money laundering risks posed by the products and services they offer, particularly where there is no face-to-face contact with the client, and devise their procedures with due regard to that risk. Risks faced by particular types of financial institution are set out below. Whilst some of the businesses referred to are not currently carried on in Anguilla, it is likely that Anguilla based firms and companies will have contact with such businesses when dealing with overseas clients and service providers.

(a) Banks and Other Deposit-Taking Institutions.

The most common form of money laundering that banks and other deposit taking institutions will encounter on a day-to-day basis in their mainstream banking business takes the form of accumulated cash transactions deposited in the banking system or exchanged for value items which can then be sold, exchanged or re-deposited elsewhere, thus breaking the audit trail. Electronic funds transfer systems increase the vulnerability by enabling cash deposits to be switched rapidly between accounts in different names and different jurisdictions.

In addition, banks, as providers of a wide range of services, are vulnerable to being used in the layering and integration stages. Mortgage and other loan accounts may be used as part of this process to create complex layers of transactions, as can other financial products created and sold by banks.

(b) Investment Businesses.

Because investment business is not generally cash based, it is probably less at risk from the initial placement of criminally derived funds than mainstream banking. Most payments are made by way of cheque or transfer from another financial institution and it can therefore be assumed that the first stage of money laundering has already taken place. Nevertheless, the purchase of investments for cash is not unknown and therefore the risk of investment businesses being used at the placement stage cannot be ignored.

Investment businesses are more likely to be used at the layering and integration stages of money laundering. The liquidity of many investment products is particularly attractive to the launderer. The ability to liquidate investment portfolios containing both lawful and illicit proceeds, whilst concealing the criminal source of the latter, combined with the huge variety of investments available and the ease of transfer between them, offers the sophisticated criminal launderer an ideal route to effective integration into the legitimate economy.

Collective investment schemes and other “pooled funds” are likely to be particularly attractive vehicles, especially where they are unregulated. The money launderer is also likely to be attracted to high risk/high reward funds because his cost of funds is low and the potentially high reward speeds up the integration process. Similarly, the ability to gear an investment (e.g. by borrowing against a portfolio or via cash-backed loans) is also very attractive to the money launderer because it puts a legitimate financial business with a genuine claim in the path of those seeking to restrain or confiscate his assets.

Investments that are cash equivalents, i.e. bearer bonds and similar investments, in which ownership can be evidenced without reference to registration of identity, may be particularly attractive as a vehicle for laundering money.

(c) Insurance Companies, Retail Product Providers and Intermediaries

Although not so obvious, non-traditional banking products and services, including insurance, are also susceptible to money laundering. There is a particular risk where intermediaries who are placing business with product providers (e.g. insurance companies and collective investment scheme managers) accept cash from the client and use a client account to pay for the investment product.

Premiums on insurance policies may be paid in cash, with the policy subsequently being cancelled in order to get a return of premium, or an insured event may occur resulting in a claim being paid out. Retail investment products are, however, more likely to be used at the layering and integration stages.

The liquidity of a unit trust may attract money launderers since it allows them quickly and easily to move their money from one product to another, mixing lawful and illicit proceeds and integrating them into the legitimate economy. Lump sum investments in liquid products are clearly most vulnerable to use by money launderers, particularly where they are of high value. Payment in cash is likely to merit further investigation, particularly where it cannot be supported by evidence of a cash-based business as the source of funds.

Insurance and investment product providers and intermediaries should therefore keep transaction records that are comprehensive enough to establish an audit trail. Such records can also provide useful information about the people and organisations involved in laundering schemes.

PART 2
THE ANGUILLA LEGISLATIVE AND
REGULATORY FRAMEWORK

1. THE ANGUILLA LEGISLATIVE AND REGULATORY FRAMEWORK

2.01 LEGISLATION ON MONEY LAUNDERING

Anguilla, conscious of its role in the international fight against money laundering, has a number of statutes and regulations concerning money laundering. Specifically, these are—

- a) The Drugs Trafficking Offences Act, R.S.A. c. D50;
- b) Drugs Trafficking Offences Act (Designated Countries and Territories) Order, R.R.A. D50-1;
- c) The Proceeds of Criminal Conduct Act, R.S.A. c. P100 (“the PCCA”);
- d) The Anti-Money Laundering Regulations, R.R.A. M100-2 (“the Regulations”);
- e) The Money Laundering Reporting Authority Act, R.S.A. c. M100; and
- f) The Criminal Justice (International Co-operation) (Anguilla) Act, R.S.A. c. C145.

2.02 PURPOSE AND STATUS OF THESE GUIDANCE NOTES

These Guidance Notes are issued under section 4 of the Money Laundering Reporting Authority Act, R.S.A. c. M100. The Guidance Notes have been drawn up:

- (a) to provide a practical interpretation of the Regulations that will assist those persons subject to the Regulations to comply with them; and
- (b) to assist all financial services businesses to develop policies and internal systems, controls and procedures that will minimise their risk of becoming unwittingly involved in money laundering schemes. However, the Notes may also be relevant to other businesses operating in or from within Anguilla.

In these Guidance Notes:

- the term “regulated person” is used to refer to a person subject to the Regulations (see paragraph 2.04);
- the term “financial services business” is used to refer to any business operating within the financial services sector in Anguilla, whether or not the business is subject to the Regulations.

The Guidance Notes represent good practice but they are not mandatory. Although Parts 3 to 6 of the Notes are addressed to regulated persons, all financial services businesses should put in place internal systems, controls and procedures that are at least equivalent to the standard indicated in the Guidance Notes. Failure in this regard may have serious consequences. In particular:

(a) As regards regulated persons, regulation 11 of the Regulations provides that in determining whether a person has complied with the requirements of the Regulations, the Court may take account of any guidance issued by the Reporting Authority whether or not contained in these Guidance Notes and any relevant supervisory or regulatory directives or guidance which applies to the person.

(b) As regards institutions and persons supervised by the Financial Services Commission, although the primary consequences of any significant failure to measure up to the standards promulgated in the Guidance Notes will be legal ones, the Commission is entitled to take such failure into consideration in the exercise of its supervisory functions and, in particular, in the exercise of its judgment as to whether directors and managers are “fit and proper” persons.

(c) As regards institutions (and their directors and managers) carrying on a financial services business that is not supervised by the Financial Services Commission, such failure may be recorded and taken into consideration at a later date in the event of an application for a licence being made to the Commission.

It is understood that the Eastern Caribbean Central Bank has similar policies to those of the Financial Services Commission [FSC] (as set out in (b) and (c) above) in relation to institutions that are subject to its supervision under the Banking Act, R.S.A. c. B11 or that may subsequently apply for a licence under that Act.

2.03 THE DRUGS TRAFFICKING OFFENCES ACT AND THE PROCEEDS OF CRIMINAL CONDUCT ACT

Note that the Drugs Trafficking Offences Act (“the DTOA”) and the PCCA applies to all individuals and businesses subject to the jurisdiction of the Court in Anguilla, including those outside the scope of the Regulations and is not limited to financial services businesses.

The offences in the DTOA and the PCCA that are of most relevance to financial services businesses are summarised below:

Offences - DTOA and PCCA

(a) **Assistance:** The combined effect of the DTOA and the PCCA is to make it an offence for any person to provide assistance to a criminal to obtain, conceal, retain or invest funds if that person knows or suspects or, in some cases, should have known or suspected that those funds are the proceeds of criminal conduct. Such assistance is punishable on summary conviction by a term of imprisonment or a fine or both, and on indictment by a maximum of 14 years imprisonment or a fine without limit or by both. It is a defence that the person concerned reported his knowledge or suspicion to the Reporting Authority established under the Money Laundering Reporting Authority Act as soon as reasonably possible.

The term “criminal conduct” includes any conduct (including an omission) wherever it occurs that would constitute an indictable offence if it had occurred in Anguilla. This would include crimes such as theft and fraud, robbery, forgery and counterfeiting, blackmail and extortion. The laundering of the proceeds of drug trafficking is dealt with under the DTOA. Note that the PCCA does not impose a duty on financial sector businesses to consider the criminal law of any other country in which the criminal conduct may have occurred.

The basis for reporting suspicions to the Reporting Authority (the "Authority") is that the knowledge or suspicion relates to funds arising out of conduct that would constitute an indictable offence if it had occurred in Anguilla. A financial institution would not be expected to know the exact nature of the criminal activity concerned, or that the particular funds passing through the account are definitely those arising from the crime.

Tax related offences are not in a special category; the proceeds of a tax related offence may amount to the proceeds of criminal conduct under the PCCA. For example, a tax related offence would constitute criminal conduct where there is conduct amounting to fraud (which may well be the case where there is tax evasion). Of course, not all overseas tax offences will amount to criminal conduct for the purposes of the PCCA and no duty is

imposed on a regulated financial services provider to investigate the tax affairs of its clients. In most cases it would not have sufficient information or the necessary knowledge to do so. Financial services businesses should be aware that criminals may state that they are avoiding tax to obscure the true origins of the funds.

(b) **Tipping off:** A person is guilty of the offence of tipping off if he discloses information to anyone that is likely to prejudice an investigation into money laundering—

- whilst knowing or suspecting that an investigation into money laundering is being, or is about to be, conducted;
- whilst knowing or suspecting that a disclosure has been made to the Authority; or
- whilst knowing or suspecting that a disclosure has been made to the appropriate internal reporting officer at his place of employment.

Tipping off is punishable on summary conviction to a maximum of 12 months imprisonment or to a fine of EC\$20,000 or by both and on indictment to a maximum of 5 years imprisonment or a fine without limit or by both. It is a defence for the person to prove either of the following:

- that he is a professional legal advisor disclosing the information in connection with, or in contemplation of, legal proceedings or the giving of advice; or
- that he did not know or suspect that the disclosure was likely to be prejudicial to the investigation.

In practice, this means that preliminary enquiries of a prospective client by staff in a financial services business, either to obtain additional information to confirm the true identity, or to ascertain the source of funds or the precise nature of the transaction being undertaken, will not trigger off a tipping off offence unless the enquirer has the requisite knowledge or suspicions.

Great care should, however, be taken where it is known or suspected that a suspicious transaction report has already been disclosed and it becomes necessary to make further enquiries, to ensure that clients do not become aware that their names have been brought to the attention of the Authority. There will be occasions where it is feasible for the financial institution to agree a joint strategy with the Authority to ensure that the interests of both parties are taken into account.

(c) **Failure to Report:** In the case of monies derived from drug trafficking, it is also an offence for any person who acquires knowledge or a suspicion of money laundering in the course of their trade, profession, business or employment not to report the knowledge or suspicion as soon as it is reasonably practical after the information comes to his attention. Failure to report in these circumstances is punishable on conviction to a substantial fine or to a term of imprisonment or both.

In the case of an employee of a person employed covered by the Order, internal reporting in accordance with the procedures laid down by the employer will satisfy this requirement. Reports by staff of regulated persons should be made through the Money Laundering Reporting Officer (see paragraph 5.03) or a nominated deputy, who has the responsibility to assess the validity of the grounds for suspicion and to judge, on the basis of the factual information available, whether a report should be made to the Authority.

(d) **Client Confidentiality**

The legislation protects those reporting suspicions of money laundering from claims in respect of any alleged breach of client confidentiality or in respect of any restrictions upon disclosure imposed by statute or contract.

2.04 THE ANTI-MONEY LAUNDERING REGULATIONS, R.R.A. M100-

Scope

As indicated above, the DTOA and the PCCA apply to all persons and businesses. However, the Regulations place additional administrative requirements on a limited number of financial services providers. The Regulations cover all persons licensed or registered to carry on relevant business and persons carrying on trust business who are not licensed under the Trust Companies and Offshore Banking Act, R.S.A. c. T60. In practice, the following are covered:

- a) Licensees under the Banking Act, R.S.A. c. B11;
- b) Offshore Banks licensed under the Trust Companies and Offshore Banking Act, R.S.A. T60;
- c) Trust Companies licensed under the Trust Companies and Offshore Banking Act, R.S.A. c. T60;
- d) Company Management companies licensed under the Company Management Act, R.S.A. c. C75;

- e) Insurers, brokers and agents licensed under the Insurance Act, R.S.A. c. I16;
- f) Credit Unions registered under the Cooperative Societies Act, R.S.A. c. C115;
- g) Friendly Societies registered under the Friendly Societies Act, R.S.A. c. F65;
- h) Attorneys-at-law insofar as they are carrying on trust business;
- i) Persons carrying on investment business” as defined in regulation 3(2) of the Regulations;
- j) Persons carrying on the business of—
 - i) forming limited partnerships;
 - ii) providing the registered office for limited partnerships;
 - iii) providing cheque cashing services;
 - iv) transmitting or receiving funds by wire or other electronic means;
 - v) lending;
 - vi) financial leasing;
 - vii) operating a bureaux de change;
 - viii) forming foundations; or
 - ix) forming protected cell companies.
- k) persons acting as manager or administrator under the Mutual Funds Act, M107;
- l) persons acting as promoter under the Mutual Funds Act, M107;
- m) persons carrying on any business, or undertaking any activity for which a licence is required under the Securities Act, S13;
- n) persons engaged in the activity of dealing in goods of any description by way of business, which involves accepting a total cash payment of \$50,000 or more or the equivalent in a foreign currency.

It should be emphasised again that all businesses risk prosecution under the DTOA or PCCA and a reputation loss if they become involved in money laundering transactions.

In the circumstances, those who believe that they may be vulnerable to being used by criminals should consider applying the requirements of the Regulations in whole or in part, whether or not they are subject to them.

Requirements of the Regulations

The Regulations impose an obligation on regulated persons to maintain policies and procedures to guard against their businesses and the financial systems being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes – first, to enable suspicious transactions to be recognised as such and reported to the Authority and secondly, to ensure that if a client comes under investigation in the future, the regulated person can provide its part of the audit trail. The Regulations cover:

- a) identification procedures;.
- b) record keeping;
- c) internal reporting procedures; and
- d) the training of staff.

Failure to comply with the Regulations may constitute an offence punishable by a maximum of 1 year imprisonment or to a fine of EC\$25,000 or both. This is irrespective of whether money laundering has taken place.

PART 3

IDENTIFICATION PROCEDURES "KNOW YOUR CUSTOMER"

3.0 IDENTIFICATION PROCEDURES - KNOW YOUR CUSTOMER

3.01 INTRODUCTION

The “know your customer” rule should be applied by all financial services businesses, although the extent of validation required may depend upon the type of business being undertaken and the procedures to be followed will depend upon the legal personality of the applicant for business and the capacity in which he is applying.

If a client establishes a business relationship using a false identity, he may be doing so for the purpose of defrauding the financial services business itself or to ensure that he cannot be traced or linked to the proceeds of a crime that the business is being used to launder. In either case, the business is at risk. Furthermore, a false name, address or date of birth will usually mean that law enforcement agencies cannot trace the client if he is needed for interview in connection with an investigation.

Subject to the exceptions specified in the Regulations, every regulated person should establish and verify, either directly or indirectly, the identity of every prospective client (called an "applicant for business" in the Regulations) and satisfy himself that the prospective client actually exists. These Guidance Notes set out what, as a matter of good practice, may reasonably be expected of a regulated person in determining what amounts to “satisfactory evidence of identity”. As the Notes are not exhaustive, there may be cases where a regulated person has properly satisfied himself that verification has been achieved by other means that he can, in the circumstances, justify.

When a business relationship is being established, the nature of the business that the prospective client expects to conduct with the regulated person should also be ascertained at the outset to show what might be expected as normal activity. In order to be able to judge whether a transaction is or is not suspicious, it is necessary to have a clear understanding of a client’s legitimate business.

Note that references in this section to:

- establishing or operating “an account” should be read as including establishing or operating any business relationship or carrying out a single transaction; and

- "verified identity" means, in the case of an individual, verified in the same manner as a prospective direct personal client and, in the case of a company, in the same manner as a prospective direct non-quoted corporate client.

3.02 DIRECT PERSONAL (INDIVIDUAL) CLIENTS

(a) General

In the case of direct personal clients (i.e. where no introduction has been made), a regulated person should aim to interview a prospective client in person. Although a personal introduction from, for example, a known and respected client or an employee may be useful; it is unlikely that it will remove the need to verify the identity of a prospective client in the manner provided in these Guidance Notes. Any introduction should, in any event, be in writing and should contain the full name and address of the prospective client together with as much personal information as is relevant.

(b) What information should be obtained?

Regulated persons should obtain the following information concerning all prospective direct personal clients:

- full name and names used together with the reason for any aliases; (ii) date and place of birth;
- nationality;
- current permanent residential address;
- telephone and fax number;
- occupation and name of employer or, if self-employed, the nature of the business;
- the reason for establishing the account and the nature of the business to be conducted;
- estimated level of turnover expected for the account; and (ix) the source of funds (i.e. generated from what transaction or business.)

(c) What evidence of identity is acceptable?

Identification documents, either originals or legally certified copies, should be pre-signed and bear a photograph of the applicant for identification at the interview. The following are acceptable:

- a current valid full passport; or
- full driving licence (provided it bears a photograph of the applicant).

Note that if, in exceptional cases, it is decided that a personal interview is not necessary, it is neither safe nor reasonable to expect a client to send an original passport or driving licence by post or courier service. In those circumstances, a legally certified copy should be requested.

(d) Documents which are not acceptable.

Identification documents that do not bear both a photograph and a signature or that are easy to obtain are not appropriate as sole evidence of identity. Examples include:

- i) birth certificates;
- ii) credit cards;
- iii) provisional driving licence;
- iv) business cards;
- v) social insurance, social security or health service cards.

Any photocopies of documents showing photographs and signatures should be plainly legible.

(e) Further verification

Regulated persons should also take appropriate steps to verify the name and address of prospective clients by at least one further method, for example:

- i) obtaining verification of identity from a respected professional who knows the applicant (a suitable form for this purpose is set out in Appendix C.2);
- ii) checking the register of electors;

- iii) making a credit reference agency search;
- iv) checking a local telephone directory;
- v) requesting sight of a recent property tax or utility bill (care must be taken that the document is an original and not a copy); or
- vi) using one of the commercial address validation/verification services.

3.03 DIRECT CLIENTS – PARTNERSHIPS

Where an application for business is made by a partnership, the identity of each individual partner who is an account signatory or who is authorised to give instructions to the regulated person should be verified as if he is a prospective direct personal client. In the case of a limited partnership, the identity of a limited partner need not be verified unless he is a significant investor (i.e. he has contributed more than 10% of the total capital of the partnership).

3.04 DIRECT CORPORATE CLIENTS (EXCEPT QUOTED COMPANIES)

For definition of “quoted company” see 3.05 below.

(a) What information and documentation should be obtained?

Regulated persons should obtain the following information and documentation concerning all prospective direct private company clients:

- i) a certified copy of the certificate of incorporation and any change of name certificates;
- ii) a certified copy of the Memorandum, Articles of Association and/or Constitution or equivalent;
- iii) the address of the registered office and the name and address of the registered agent (if applicable);
- iv) the address of the principal place of business;
- v) the verified identity of the shareholders of the company;

- vi) the verified identity of each of the beneficial owners of the company who hold an interest of 10% or more in the company and/or the persons on whose instructions the directors, the signatories on the account or the individuals authorised to deal with the regulated person are empowered to act;
- vii) the verified identity of each of the directors of the company and the account signatories (or the persons authorised to deal with the regulated person);
- viii) a resolution, bank mandate signed application or other form of authority signed by no fewer than the number of directors required for a quorum containing details of the persons authorised to give instructions to the regulated person concerning the account together with their specimen signatures;
- ix) copies of any Powers of Attorney or other similar instruments or;
- x) documents given by the directors in relation to the company ;
- xi) a statement signed by a director setting out the nature of the business of the company, the reason for the account being opened, the expected turnover or volume of business and the source of funds.

(b) Additional information and documentation

Consideration should be given to obtaining the following documentation although it is accepted that it will not be necessary to obtain it in all cases:

- i) a copy of the last available accounts of the company;
- ii) a Certificate of Good Standing.

3.05 DIRECT CORPORATE CLIENTS (QUOTED COMPANIES)

Note that for the purposes of these Guidance Notes, “quoted company” means a company quoted on an approved securities exchange (within the meaning of the Companies Act) or a subsidiary of such a company.

(a) What information and documentation should be obtained?

Regulated persons should obtain the information and documentation required in respect of a non-quoted company (see 3.04 above) with the following modifications:

- i) satisfactory evidence that the company is a “quoted company”;
- ii) the verified identity of each shareholder holding greater than a 20% interest in the company;
- iii) the verified identity of each beneficial owner of the company holding greater than a 20% interest in the company;
- iv) although the identity of all directors should be obtained, verification of identity need only be obtained for each executive director;

(b) Additional information and documentation

Consideration should be given to obtaining a copy of the last available accounts of the company, although it is accepted that this will not be necessary in all cases.

3.06 DIRECT CLIENTS – TRUSTEES

Trust, nominee and fiduciary accounts are popular vehicles for criminals who wish to avoid identification procedures and to launder money. Great care should therefore be taken by a regulated person if he receives a direct application for business from the trustees of a trust.

(a) What information and documentation should be obtained?

The identification of trustees, settlors, protectors, any person having power to appoint or remove trustees and any person (other than the settlor) who has provided funds to the settlement should be verified as direct prospective clients (individual or corporate as appropriate). In addition, the following should be obtained:

- i) evidence verifying proper appointment of trustees, e.g. copy extracts from the Deed of Trust or a letter from an advocate verifying the appointment;
- ii) details of the nature and purpose of the trust; and
- iii) details of the source of funds.

(b) Additional information and documentation

Consideration should be given to obtaining and verifying the identity of the beneficiaries or at least the principal beneficiaries of a trust, especially if the trust is complex. However, it is accepted that this will not always be possible or necessary.

3.07 INTRODUCED BUSINESS, APPROVED INTRODUCERS

(a) General

Where a prospective client is introduced to a regulated person by a third party approved under the Regulations (called in these Guidance Notes an "approved introducer") then, unless he knows or suspects money laundering, the regulated person is permitted to rely on a written assurance provided by the approved introducer to the effect that evidence of the identity of the applicant for business has been obtained and recorded in accordance with procedures maintained by the introducer under the Regulations or under legislation equivalent to the Regulations.

(b) Who is an approved introducer?

The following are approved introducers under the Regulations:

- another regulated person;
- a foreign regulated person; and
- an overseas agent.

A foreign regulated person is a person:

- i) 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");
- ii) that carries on relevant financial services in its home jurisdiction; and
- iii) that is subject to legislation in its home jurisdiction that is at least
 - a) equivalent to the Regulations.
 - b) is approved by the commission.

An overseas agent is a foreign regulated person who has been approved by the Financial Services Commission in Anguilla for the purposes of filing documents with the Companies Registry, in Anguilla, in electronic form. A list of jurisdictions that may, for the purposes of the Regulations, be treated as having legislation at least equivalent to Anguilla's Anti-Money Laundering Regulations is provided in Appendix B. Although the legislation of other jurisdictions may satisfy the requirements of paragraph (c) above, regulated persons are strongly advised to seek the opinion of the Financial Services Commission before treating a person from a jurisdiction that is not listed in Appendix B as a foreign regulated person.

(c) Procedure for dealing with approved introducers

It is important to note that this provision does not in any way lessen the responsibility of a regulated person to obtain and record the identity of each applicant for business. Where an approved introducer introduces a trust, he should provide the identity of trustees, settlors, protectors and any person having power to appoint or remove trustees. The regulated person should also consider whether it is appropriate to require the introducer to identify beneficiaries. A regulated person should obtain a referral document in similar format to Appendix C.2 from an approved introducer in respect of each applicant for business introduced. Where an approved introducer is introducing a block of clients, it is permissible for the introducer to provide one suitably modified referral document annexing a list of clients with their details.

(d) Approved introducer unwilling or unable to provide written Assurance

If an approved introducer is unable or unwilling to provide written assurance as required by the Regulations, he should be treated as a non-approved introducer. In these circumstances, however, additional caution should be exercised and it would be prudent for the regulated person to satisfy himself that there are genuine reasons for the failure of the approved introducer to provide a written assurance. A suitable letter of introduction is provided at Appendix C.1.

3.08 INTRODUCED BUSINESS, NON-APPROVED INTRODUCERS

(a) Except as indicated in paragraph (b), a prospective client introduced by a third party who is not an approved introducer should be treated as if he/it is a direct prospective client, despite whatever assurances may be given by the person making the introduction.

(b) Where a prospective client is introduced by a company that is part of the same group as the regulated person (i.e. a parent or subsidiary), the introducer may be treated as an approved introducer.

3.09 THE APPLICANT FOR BUSINESS ACTS FOR A PRINCIPAL

(a) Disclosed Principal

A regulated person may receive an application for business from an intermediary who is acting on behalf of a disclosed principal, i.e. there is an underlying client. The action to be taken by the regulated person will depend upon the status of the applicant for business:

- if the intermediary is another regulated person or a foreign regulated person, this may be treated as an exempt case (see 3.10);
- if the intermediary is an approved introducer, paragraph 3.07 applies in respect of each principal.
- in any other case, the identity of the principal and the applicant must be verified as if each is a prospective direct individual or corporate client.

(b) Undisclosed principal

An applicant may act for an undisclosed principal. There are two possibilities:

- i) The applicant advises the regulated person that he is acting on behalf of a principal but declines to identify him. This is unacceptable.
- ii) The applicant does not indicate that he is acting for a principal, but the regulated person suspects that this is the case. In these circumstances, caution must be exercised. If the identity of the applicant is satisfactorily verified, the regulated person should monitor his activities to ascertain whether the client is an intermediary. If he is, no further business should be undertaken unless the identity of the principal can be satisfactorily verified.

3.10 PRE-EXISTING BUSINESS RELATIONSHIPS

Where a client or customer entered into relationship with a regulated person prior to the coming into effect of the Regulations, the regulated person should obtain and keep the same information required of a new customer for the pre-existing customer.

3.11 EXEMPT CASES

IDENTIFICATION

In the following cases, it is not necessary to verify the identity of an applicant for business unless the regulated person knows or suspects that the applicant is engaged in money laundering, or that he is acting on behalf of another person who is engaged in money laundering:

(a) **Exempted persons.**

Verification of identity is not required if the applicant is another regulated person or a foreign regulated person.

(b) **Small one-off transactions.**

Verification of identity is not required in the case of a one-off transaction or a series of linked transactions, if the sum involved is less than EC\$27,169 (US\$10,000) or the equivalent in another currency.

DECLARATION OF SOURCE OF FUNDS

In the following cases, it is not necessary for an applicant for business to file a declaration of source of funds form unless the regulated person knows or suspects that the applicant is engaged in money laundering, or that he is acting on behalf of another person who is engaged in money laundering:

(c) **Exempted persons.**

Declarations of source of funds are not required from persons who have been pre-screened by the regulated person and placed on an exempt list. Persons are provided with exempt status based on the regulated person's knowledge of the applicant's source of funds. Exemptions are provided for transactions up to a pre-established level. Persons' eligibility for inclusion on the exempt list should be reviewed periodically.

(d) **Small one-off transactions.**

Declaration of source of funds is not required in the case of a one-off transaction or a series of linked transactions, if the sum involved is less than EC\$27,169 (US\$10,000) or the equivalent in another currency.

Note that for the purposes of these Guidance Notes, transactions that are separated by an interval of more than six months are not, in the absence of specific evidence to the contrary, required to be treated as linked.

3.12 ESTABLISHED CLIENTS

(a) Once identification procedures have been satisfactorily completed with respect to a client, the business relationship is established and the client becomes an "established client". There is no need for a regulated person to obtain further evidence of the identity of an established client when transactions are subsequently undertaken for him as long as:

See the note to the Regulations (Note 2.02)

- i) the regulated person keeps records in accordance with the Regulations and these Guidance Notes; and
- ii) regular contact is maintained.

(b) It would, however, make sound business sense for a regulated person to seek tails he holds in respect of each client from that client on a regular basis (for example annually).

(c) Note that this paragraph does not apply if money laundering is known or suspected.

3.13 ACQUISITION OF ONE FINANCIAL SECTOR BUSINESS BY ANOTHER

When a regulated person acquires the business and accounts of another financial services provider, either in whole or in part, it is not necessary for the identity of all existing clients to be re-identified, if:

- i) all client account records are acquired with the business; and
- ii) the money laundering procedures previously undertaken by the acquired business are in compliance with the Regulations and Guidance Notes or, if the business is situated overseas, are equivalent to the procedures specified in the Regulations and Guidance Notes;

In the event that the identification procedures previously undertaken are not in accordance with or equivalent to the procedures specified in the Regulations and Guidance Notes, the procedures cannot be checked or the client records are not available

to the acquiring regulated person, the identity of all transferred clients must be verified as soon as practicable.

3.14 TIMING OF VERIFICATION

Verification of identity should be completed before a regulated person enters into a business relationship or carries out a one-off transaction. However if, for sound business reasons, it is necessary for a regulated person to carry out a transaction, for example to open an account or receive funds from an applicant or business, before verification of his identity has been established, this should be subject to stringent controls which should ensure that any funds received are not passed on to third parties. Any such decision should be authorised in writing by a senior officer who must also provide an explanation for the decision. A suitable form of authority is annexed to these Guidance Notes as C.3.

3.15 RESULTS OF VERIFICATION

Verification, once commenced, should normally be pursued to a conclusion or to the point of refusal. If a prospective client does not pursue an application, the regulated person should consider whether this, in itself, is suspicious.

(a) Satisfactory

Once verification has been satisfactorily completed, further evidence of identity will not normally be required for subsequent transactions.

(b) Unsatisfactory

If a regulated person is unable to satisfactorily verify the identity of a prospective client or any person who, under these Guidance Notes, is to be treated as a prospective client:

- i) if there are no grounds for suspicion, the regulated person should not enter, or should withdraw from, the business relationship, any funds being held to the order of the person from whom they came;
- ii) if the failure to satisfactorily verify the identity of the prospective client raises suspicions, a report should be made to and guidance sought from the Authority.

3.16 THE INCORPORATION OF COMPANIES, THE INTERNET AND ACORN

Where the business to be conducted on behalf of a prospective client includes the incorporation of a company, the identity of each proposed director, shareholder and beneficial owner of the company should be verified.

The Internet will undoubtedly play an important role in the continuous development of Anguilla as a financial services centre, especially with the operation of the ACORN system. In general terms, regulated persons should not treat Internet applicants any differently to persons who make application by more traditional means. There is no reason why initial application forms cannot be completed on-line as long as this is followed up with the usual procedures for verifying the identity of the applicant.

In the case of overseas agents under the ACORN system, on-line incorporations should be considered as introduced business. It follows that company managers in Anguilla should only permit an overseas agent to incorporate companies online for new clients if the overseas agent is a foreign regulated person within the meaning of the Regulations.

The local company manager or, in the case of an overseas agent who is a foreign regulated person the agent, should normally obtain satisfactory evidence of identity before submitting an application for the on-line incorporation of a company. In exceptional cases, a company may be incorporated for a client prior to the completion of identification procedures provided that the manager or agent is able to retain control of the company until the procedures have been completed. In these circumstances, paragraph 3.14 would also apply.

3.17 GENERAL POINTS ON IDENTIFICATION

(a) Addresses

For the purposes of these Guidance Notes, a person's address should include the Zip Code or other postal code. Note that a P.O. Box is not sufficient.

(b) Changes in information recorded

Any subsequent changes to the information obtained by a regulated business in respect of a prospective client that the regulated person becomes aware of should, of course, be recorded.

PART 4

RECORD KEEPING PROCEDURES

4.0 RECORD KEEPING PROCEDURES

4.01 RECORDS TO BE KEPT

(a) Identification Records

A regulated person must, in respect of each person whose identity he has sought to verify, keep a record of all evidence obtained. This applies whether or not a business relationship is eventually established or a transaction carried out. Identification records should include:

- i) a description of the steps taken and of the evidence obtained to verify the identity of the person concerned;
- ii) the actual evidence obtained, a copy of the evidence obtained or information sufficient to enable a copy of the evidence to be obtained (e.g. from an approved introducer);
- iii) if a regulated person decides to carry out a transaction prior to verification of identity, a record of the decision and a copy of the written authorization and explanation given by the senior officer concerned (see paragraphs 3.14 and 3.16);
- iv) if the case is an exempt case or the prospective client was introduced by an approved person, the information relied upon in support;
- v) any changes to information obtained; and
- vi) details of any requests made to the person to re-confirm the information held on file (see paragraph 3.12(b)).
- vii) Identification records should be kept in Anguilla.

(b) Transaction Records

A regulated person is required to maintain a record of all transactions undertaken in respect of relevant financial business. The purpose of this requirement is to enable investigators to establish a satisfactory audit trail. Given the wide variety of transactions that could constitute relevant financial business, it is obviously not possible to provide a definitive list of transaction records that should be kept. These may include, however, records of or showing:

- i) the volume of funds flowing through an account and (if known) the origin of the funds;
- ii) ii. the form in which funds were offered or withdrawn, for example by cash or cheque and, if known, the destination of funds paid out;
- iii) the identity of the person undertaking the transaction or for whom the transaction was undertaken;
- iv) the form of instruction and/or authority;
- v) in the case of an investment transaction:
 - the name and address of the counterparty,
 - the investment dealt in, including price and size,
 - whether the transaction was a purchase or sale,
 - whether the investments were held in safe custody by the business or sent to the client or to his order and, if to his order, the name and address of the person to whom they were sent.

In the case of insurance business, the records should include:

- i) the proposal documentation,
- ii) all post-sale records associated with the maintenance of the contract up to and including maturity; and
- iii) details of and documentation relating to the maturity of the contract and the settlement of any claims.

(c) Registers of Transaction Reports and Money Laundering Enquiries

The Regulations require a regulated person to establish and maintain registers detailing all suspicious transaction reports made by that person to the Authority and all money laundering enquiries made to it by the Authority. The register of Money Laundering Enquiries should include the following:

- i) the date and nature of the enquiry, including the name and address of the person it involves;
- ii) the name of the enquiring officer;
- iii) the power under which the enquiry is made;
- iv) a summary of any information disclosed.

Although not a requirement under the Regulations, as a matter of good practice every regulated person should also maintain records of:

- i) all enquiries it makes to the Authority; and
- ii) all decisions not to make a suspicious transaction report to the Authority (together with the reasons) where an internal suspicious transaction report has been made.

The above registers and records should be kept in Anguilla.

(d) Training Records

Although training records are not required to be kept, a regulated person is advised to keep such records so that he can demonstrate compliance with the requirements of the Regulations in respect of staff training. Training records should include:

- i) details of the training programmes provided; and
- ii) the names of the staff who have received training and the dates upon which training was delivered.

4.02 PERIOD FOR WHICH RECORDS SHOULD BE KEPT BY ALL REGULATED PERSONS

- (a) In the case of a person who never became a client (e.g. his identity was not satisfactorily established), identification records should be kept for a period of 6 years from the date upon which the regulated person decides not to proceed with the transaction or business relationship.
- (b) In the case of a client, identification records should be kept for a period of 6 years from the date when the person concerned ceases to be a client; and
- (c) Transaction records should be kept for a period of 6 years from the date upon which the relevant transaction or series of transactions is completed.
- (d) The regulations do not specify the time for which a register of money laundering enquiries should be kept. It is recommended that the register should be kept for a period of five years following the date of the last entry.
- (e) If training records are kept, it is suggested that they should be kept for a period of at least 3 years.

4.03 REQUESTS BY AUTHORITY TO RETAIN RECORDS AND INVESTIGATION

Notwithstanding the expiry of the minimum retention period, a regulated person:

- a) Must keep such records as he may be directed to keep by the Authority or a police officer; and
- b) Must not, without the written permission of a police officer or the Authority, destroy records relating to a client if he knows that an investigation is proceeding in respect of that client.

4.04 FORM OF RECORDS

Subject to the following paragraph, records may consist of original documentation, hard copy, microfilm or microfiche and/or electronic data. It is an over-riding requirement that records must be kept in such a way as to allow for their retrieval in legible form within a reasonable period of time. Records held by third parties (e.g. approved introducers) are not in readily retrievable form unless the regulated person is satisfied that the third party is itself able and willing to keep such records and to provide them to him when required.

PART 5 RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

5.0 RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

5.01 INTRODUCTION

The Regulations require a regulated person to report to the Authority any transaction that gives rise to a suspicion that money laundering may be taking place. Furthermore, the reporting of a suspicion to the Authority is a defence in proceedings against a person for a money laundering offence.

It is obviously difficult to define a suspicious transaction especially as, to some extent, suspicion is subjective. However, one badge of a suspicious transaction is that it is inconsistent with a client's normal business activities. The first key to recognising a suspicious transaction is, therefore, to know the business of your client well enough to recognise abnormal business activity.

5.02 MONITORING

A regulated person should, as part of the identification process, have obtained information concerning the business of his client and, in particular, the business that he expects to undertake with the client. See paragraphs 3.02(b) and 3.04(a).

By establishing systems for ensuring that the business activities of its clients are monitored on an ongoing basis, a regulated person will be in a position to notice transactions that are inconsistent with what is expected. The monitoring will also enable him to build up a picture of the clients' ongoing business to measure future transactions against. This is particularly important with regard to clients of a regulated person that were already established when the Regulations and these Guidance Notes took effect. Possible matters to monitor include:

- transaction type and size;
- the frequency of transactions;
- the geographical origin and destination of transactions;
- the account signatories.

Examples of suspicious transactions and activities are set out in appendix A.

5.03 INTERNAL REPORTING

A regulated person is required to appoint one of his employees as a Money Laundering Reporting Officer ("MLRO"). The identity of the MLRO must be notified to the Authority. The MLRO must have sufficient seniority to ensure compliance with the regulations and these Guidance Notes. The MLRO:

- i) acts as the point of contact between his employer (the regulated person) and the Authority; and
- ii) in that capacity, is responsible for receiving suspicious transaction reports from staff of a regulated person (either directly or through a line manager) and determining whether a suspicious transaction report should be made to the Authority.

Upon receipt of an internal suspicious transaction report, the MLRO should carry out an investigation and, if he decides that the information does substantiate a suspicion of money laundering or he is genuinely uncertain, he must disclose the information promptly to the Authority.

If the MLRO decides that the information does not substantiate a suspicion of money laundering, he is not obliged to make a report. In these circumstances, the MLRO would be well advised to fully document his decision and the reasons for it. It is, of course, a matter for each regulated person to determine its own internal reporting lines and procedures, but a form that may be used for making internal reports is annexed to these Guidance Notes as C.4.

5.04 REPORTING TO THE AUTHORITY

If the MLRO decides that a disclosure should be made, a report in the standard form (annexed as C5) should be sent to the Authority. Note that although in urgent cases a report may be made by telephone, the Authority will normally only accept written reports and a telephone report must be confirmed in writing. The receipt of a report will be promptly acknowledged by the Authority.

Should a prosecution ensue, the Authority will use its best endeavours to protect the source of the information. The Authority considers the maintenance of a confidential relationship between itself and regulated persons of the utmost importance. In a doubtful case, the MLRO may consult with the Reporting Authority before making a formal report.

5.05 EXAMPLES OF SUSPICIOUS TRANSACTIONS

Some examples of suspicious transactions are annexed to these Guidance Notes as Appendix A. These examples are not intended to be exhaustive. However, identification of any of the types of transaction listed should prompt further investigation.

On the other hand, regulated persons should keep in mind that whilst they are required to maintain anti-money laundering procedures in accordance with the Regulations and these Guidance Notes, they are not required to detect money laundering activities.

PART 6

TRAINING AND AWARENESS

6. TRAINING AND AWARENESS

6.01 THE REGULATIONS

The Regulations require regulated persons to provide training to relevant staff on:

- a) the DTOA, the PCCA, the Regulations, these Guidance Notes and any other relevant supervisory guidance;
- b) the regulated person's own internal procedures;
- c) the recognition and handling of money laundering transactions.

Training must be given to new staff as soon as possible after their appointment. For the purposes of the Regulations, a relevant employee is an employee who, in the course of his duties, has or may have access to any information which may be relevant in determining whether any person is engaged in money laundering. The Regulations do not specify the nature of the training to be given, and these Guidance Notes therefore suggest what steps regulated persons should take to fulfil this requirement.

6.02 THE NEED FOR STAFF AWARENESS

The effectiveness of the money laundering procedures established by a regulated person is dependent on the level of awareness of the staff employed. It is essential that staff fully appreciate the serious nature of the background against which the Proceeds of Criminal Conduct Act has been enacted and the Regulations made.

Staff should also be aware of their own personal statutory obligations, and must be informed that they can be personally liable for failure to report information in accordance with internal procedures. All staff should be encouraged to cooperate fully and to provide a prompt report of any suspicious transactions.

All relevant staff needs to be fully educated in the "Know Your Customer" requirements. Training should cover not only the need to know a client's true identity, but also, where a business relationship is being established, the need to know enough about the type of

business activity expected in relation to the client at the outset so that suspicious activity can be identified in the future.

6.03 TRAINING PROGRAMMES

While each regulated person should decide how to meet the training requirements of the Regulations, the following is recommended:

(a) New Employees

Irrespective of seniority, a new employee who will be dealing with clients or their transactions should be provided with an initial training course covering:

- i) a description of the nature and process of money laundering;
- ii) an explanation of the legal obligations of his employer and himself;
- iii) the procedures in place for verifying the identity of prospective clients;
- iv) the recognition of suspicious transactions;
- v) the procedures for making suspicious transaction reports to the MLRO; and
- vi) the importance placed on the reporting of suspicious transactions by their employer.

(b) Operations staff

Staff who deals with the public such as cashiers, dealers and sales persons are the first point of contact with potential money launderers, and their efforts are vital to an organisation's effectiveness in combating money laundering. Staff responsible for opening new accounts or dealing with prospective clients should be given more in depth training on the need to verify the prospective client's identity and the procedures for doing so. The need to report suspicious transactions even if the transactions do not proceed should also be emphasized to such staff.

Additional training should be given to operations staff on the factors which may give rise to suspicions about a client's activities, and on the procedures to be adopted when a transaction is considered to be suspicious. Operations staff should also be taught to be vigilant when dealing with occasional clients, especially where large cash transactions or bearer securities are involved. Staff involved in the processing of deals or transactions

should be given training in the recognition of abnormal settlement, payment or delivery instructions.

(c) Supervisors and Managers

Supervisors and managers should receive a higher level of training covering all aspects of money laundering procedures, including the offences and penalties arising from the relevant primary legislation for non-reporting or for assisting money launderers, the procedures relating to dealing with production and restraint orders and the requirements for verification of identity and retention of records.

(d) Training for Money Laundering Reporting Officers

MLROs should receive in-depth training on all aspects of the primary legislation, the Code and internal policies. They should also receive extensive initial and ongoing instruction on the validation and reporting of suspicious transactions, on the feedback arrangements and on new trends of criminal activity.

(e) Updates and Refresher Courses

It will be necessary to make arrangements for updating and refresher training at regular intervals to ensure that all relevant employees remain familiar with and are updated as to their responsibilities.

APPENDIX A

EXAMPLES OF SUSPICIOUS TRANSACTIONS

1. MONEY LAUNDERING USING CASH TRANSACTIONS

- a) Unusually large cash deposits made by an individual or company whose ostensible business activities would normally be generated by cheques and other instruments.
- b) Substantial increases in cash deposits of any individual or business without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account and/or to a destination not normally associated with the customer.
- c) Customers who deposit cash by means of numerous credit slips so that the total of each deposit is unremarkable, but the total of all the credits is significant, or similar deposits at a number of branches within a short space of time, all being credited to a central account.
- d) Company accounts whose transactions, both deposits and withdrawals are denominated by cash rather than the forms of debit and credit normally associated with commercial operations (e.g. cheques, Letters of Credit, Bills of Exchange, etc.).
- e) Customers who constantly pay in or deposit cash to cover requests for money transfers, bankers' drafts or other negotiable and readily marketable money instruments.
- f) Customers who seek to exchange large quantities of low denomination notes for those of higher denomination.
- g) Frequent exchange of cash into other currencies.
- h) Branches that have a great deal more cash transactions than usual. (Head Office statistics detect aberrations in cash transactions).
- i) Customers whose deposits contain counterfeit notes or forged instruments.
- j) Customers transferring large sums of money to or from overseas locations with instructions for payment in cash.

- k) Large cash deposits using night safe facilities, thereby avoiding direct contact with bank staff.

2. MONEY LAUNDERING USING BANK ACCOUNTS

- a) Customers who wish to maintain a number of trustee or client accounts which do not appear consistent with the type of business, including transactions which involve nominees.
- b) Customers who have numerous accounts and pay in amounts of cash to each of them in circumstances in which the total of credits would be a large amount.
- c) Any individual or company whose account shows virtually no normal personal banking or business related activities, but is used to receive or disburse large sums which have no obvious purpose or relationship to the account holder and/or his business (e.g. a substantial increase in turnover on an account).
- d) Reluctance to provide normal information when opening an account, providing minimal or fictitious information or, when applying to open an account, providing information that is difficult or expensive for the institution to verify.
- e) Customers who appear to have accounts with several institutions within the same locality, especially when the bank is aware of a regular consolidation process from such accounts prior to a request for onward transmission of the funds.
- f) Matching of payments out with credits paid in by cash on the same or previous day.
- g) Paying in large third party cheques endorsed in favour of the customer.
- h) Large cash withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit from abroad.
- i) Customers who together, and simultaneously, use separate tellers to conduct large cash transactions or foreign exchange transactions.
- j) Greater use of safe deposit facilities. Increased activity by individuals, the use of sealed packets deposited and withdrawn.
- k) Companies' representatives avoiding contact with the branch.

- l) Substantial increases in deposits of cash or negotiable instruments by a professional firm or company, using client accounts or in-house company or trust accounts, especially if the deposits are promptly transferred between other client, company and trust accounts.
- m) Customers who decline to provide information that in normal circumstances would make the customer eligible for credit or for other banking services that would be regarded as valuable.
- n) Insufficient use of normal banking facilities (e.g. avoidance of high interest rate facilities for large balances).
- o) Large number of individuals making payments into the same account without an adequate explanation.

3. MONEY LAUNDERING USING INVESTMENT-RELATED TRANSACTIONS

- a) Purchasing of securities to be held by the institution in safe custody, where this does not appear appropriate given the customer's apparent standing.
- b) Back-to-back deposit/loan transactions with subsidiaries of, or affiliates of, overseas institutions in known drug trafficking areas.
- c) Request by customers for investment management services (either foreign currency or securities) where the source of the funds is unclear or not consistent with the customer's apparent standing.
- d) Large or unusual settlements of securities in cash form.
- e) Buying and selling of a security with no discernible purpose or in circumstances which appear unusual.

4. MONEY LAUNDERING BY OFFSHORE INTERNATIONAL ACTIVITY

- a) Customer introduced by an overseas branch, affiliate or other bank based in countries where production of drugs or drug trafficking may be prevalent.
- b) Use of letters of credit and other methods of trade finance to move money between countries where such trade is not consistent with the customer's usual business.

- c) Customers who make regular and large payments, including wire transactions, that cannot be clearly identified as bona fide transactions to, or receive regular and large payments from, countries which are commonly associated with the production, processing or marketing of drugs and/or proscribed terrorist organisations.
- d) Building up of large balances, not consistent with the known turnover of the customer's business and subsequent transfer of account held overseas.
- e) Unexplained electronic fund transfers by customers on an in and out basis or without passing through an account.
- f) Frequent requests for traveller's cheques, foreign currency drafts or other negotiable instruments to be issued.
- g) Frequent paying in of traveller's cheques or foreign currency drafts, particularly if originating from overseas.

5. MONEY LAUNDERING INVOLVING FINANCIAL INSTITUTION EMPLOYEES AND AGENTS

- a) Changes in employee characteristics (e.g. lavish lifestyles or avoiding taking holidays).
- b) Changes in employee or agent performance (e.g. the salesman selling products for cash has remarkable or unexpected increase in performance).
- c) Any dealing with an agent where the identity of the ultimate beneficiary or counterparty is undisclosed, contrary to normal procedure for the type of business concerned.

6. MONEY LAUNDERING BY SECURED AND UNSECURED LENDING

- a) Customers who repay problem loans unexpectedly.
- b) Request to borrow against assets held by the institution or a third party, where the origin of the assets is not known or the assets are inconsistent with the customer's standing.

- c) Request by a customer for an institution to provide or arrange finance where the source of the customer's financial contribution to a deal is unclear, particularly where property is involved.

7. SALES AND DEALING STAFF

(a) New business

Although long-standing customers may be laundering money through an investment business, it is more likely to be a new customer who may use one or more accounts for a short period only and may use false names and fictitious companies. Investment may be direct with a local institution or indirect via an intermediary who "doesn't ask too many awkward questions", especially (but not only) in a jurisdiction where money laundering is not legislated against or where the rules are not rigorously enforced.

The following situations will usually give rise to the need for additional Enquiries:

- i) A personal client for whom verification of identity proves unusually difficult and who is reluctant to provide details.
- ii) A corporate/trust client where there are difficulties and delays in obtaining copies of the accounts or other documents of incorporation.
- iii) A client with no discernible reason for using the firm's services, e.g. clients with distant addresses who could find the same service nearer their home base; clients whose requirements are not in the normal pattern of the firm's business which could be more easily serviced elsewhere.
- iv) An investor introduced by an overseas bank, affiliate or other investor both of which are based in countries where production of drugs or drug trafficking may be prevalent.
- v) Any transaction in which the counterparty to the transaction is unknown.

(b) Intermediaries

There are many clearly legitimate reasons for a client's use of an intermediary. However, the use of intermediaries does introduce further parties into the transaction thus increasing opacity and, depending on the designation of the account, preserving

anonymity. Likewise, there are a number of legitimate reasons for dealing via intermediaries on a 'numbered account' basis; however, this is also a useful tactic which may be used by the money launderer to delay, obscure or avoid detection. Any apparently unnecessary use of an intermediary in the transaction should give rise to further enquiry.

(c) Dealing patterns and abnormal transactions

The aim of the money launderer is to introduce as many layers as possible. This means that the money will pass through a number of sources and through a number of different persons or entities. Long-standing and apparently legitimate customer accounts may be used to launder money innocently, as a favour, or due to the exercise of undue pressure. Examples of unusual dealing patterns and abnormal transactions may be as follows

Dealing patterns

- i) A large number of security transactions across a number of jurisdictions.
- ii) Transactions not in keeping with the investor's normal activity, the financial markets in which the investor is active and the business which the investor operates.
- iii) Buying and selling of a security with no discernible purpose or in circumstances which appear unusual, e.g. churning at the client's request.
- iv) Low grade securities purchased in an overseas jurisdiction, sold locally and high grade securities purchased with the proceeds.
- v) Bearer securities held outside a recognised custodial system.

Abnormal transactions

- i) A number of transactions by the same counterparty in small amounts of the same security, each purchased for cash and then sold in one transaction, the proceeds being credited to an account different from the original account;
- ii) Any transaction in which the nature, size or frequency appears unusual, e.g. early termination of packaged products at a loss due to front end loading; early cancellation, especially where cash had been tendered and/or the refund cheque is to a third party.
- iii) Transfer of investments to apparently unrelated third parties;

- iv. Transactions not in keeping with normal practice in the market to which they relate, e.g. with reference to market size and frequency, or at off market prices.
- v. Other transactions linked to the transaction in question which could be designed to disguise money and divert it into other forms or other destinations or beneficiaries.

8. SETTLEMENTS

(a) Payment

Money launderers will often have substantial amounts of cash to dispose of and will use a variety of sources. Cash settlement through an independent financial advisor or broker may not in itself be suspicious; however, large or unusual settlements of securities, deals in cash and settlements in cash to a large securities house will usually provide cause for further enquiry. Examples of unusual payment settlement may be as follows:

- i) A number of transactions by the same counterparty in small amounts of the same security, each purchased for cash and then sold in one transaction.
- ii) Large transaction settlement by cash.
- iii) Payment by way of cheque or money transfers where there is a variation between the account holder/signatory and the customer.

(b) Registration and delivery

Settlement by registration of securities in the name of an unverified third party should always prompt further enquiry. Bearer securities, held outside a recognised custodial system, are extremely portable and anonymous instruments which may serve the purposes of the money launderer well. Their presentation in settlement or as collateral should therefore always prompt further enquiry as should the following:

- i) Settlement to be made by way of bearer securities from outside a recognised clearing system;
- ii) Allotment letters for new issues in the name of persons other than the client.

(c) Disposition

As previously stated, the aim of money launderers is to take ‘dirty’ cash and to turn it into ‘clean’ spendable money or use it to pay for further shipments of drugs, etc. Many of those at the root of the underlying crime will be seeking to remove the money from the jurisdiction in which the cash has been received, with a view to its being received by those criminal elements for whom it is ultimately destined in a manner which cannot easily be traced. The following situations should therefore give rise to further enquiries:

- i) Payment to a third party without any apparent connection with the investor;
- ii) Settlement either by registration or delivery of securities to be made to an unverified third party;
- iii) Abnormal settlement instructions, including payment to apparently unconnected parties.

9. POTENTIALLY SUSPICIOUS CIRCUMSTANCES – TRUST COMPANIES

The following are examples of potentially suspicious circumstances which may give rise to a suspicion of money laundering in the context of Trust Companies:

(a) Suspicious Circumstances relating to the Customer/Client’s Behaviour

- i) The establishment of Companies or Trusts which have no obvious commercial purpose;
- ii) Clients/customers who appear uninterested in legitimate tax avoidance schemes;
- iii) Sales invoice totals exceeding the known value of goods;
- iv) The client/customer makes unusually large cash payments in relation to business activities which would normally be paid by cheques, bankers drafts etc.;
- v) The customer/client pays either over the odds or sells at undervaluation;
- vi) Customers/clients have a myriad of bank accounts and pay amounts of cash into all those accounts which, in total, amount to a large overall sum;

- vii) Customers/clients transferring large sums of money to or from overseas locations with instructions for payment in cash;
 - viii) The payment into bank accounts of large third party cheques endorsed in favour of the client/customer.
- (b) **Potentially Suspicious Secrecy may involve the following**
- i) The excessive or unnecessary use of nominees
 - ii) The unnecessary granting of wide ranging Powers of Attorney
 - iii) The utilisation of a client account rather than the payment of things directly
 - iv) The performance of 'execution only' transactions
 - v) An unwillingness to disclose the sources of funds
 - vi) The use of a mailing address;
 - vii) The tardiness and/or unwillingness to disclose the identity of the ultimate beneficial owners or beneficiaries.
- (c) **Suspicious Circumstances in Groups of Companies and/or Trusts**
- i) Group structures for tax purposes
 - ii) The Companies which continually make substantial losses
 - iii) Complex group structures without a cause
 - iv) Subsidiaries which have no apparent purpose
 - v) A frequent turnover in shareholders, directors or trustees
 - vi) Uneconomic use of bank accounts in several currencies for no apparent reason
 - vii) The existence of unexplained transfers of large sums of money through several bank accounts.

It should be noted that none of these factors on their own necessarily mean that a customer/client or any third party is involved in any money laundering. However, in most circumstances a combination of some of the above factors should arouse suspicions.

In any event, what does or does not give rise to a suspicion will depend on the particular circumstances.

APPENDIX B

JURISDICTIONS WITH LEGISLATION EQUIVALENT TO THE REGULATIONS

The following jurisdictions may, without further enquiry, be treated as jurisdictions with Money Laundering Legislation that is at least equivalent to Anguilla's Anti-Money Laundering Regulations, R.R.A. M100-2

FATF Member Countries:

Argentina	Australia
Austria	Belgium
Brazil	Canada
China	Denmark
European Union	Finland
France	Germany
Greece	Gulf Co-operation Council
Hong Kong, China	Iceland
Ireland	Italy
Japan	Kingdom of the Netherlands
Luxembourg	Mexico
New Zealand	Norway
Portugal	Russian Federation
Singapore	South Africa
Spain	Sweden
Switzerland	Turkey
United Kingdom	United States of America

Other Countries:

Bahamas	Bermuda
British Virgin Islands	Cayman Islands
Gibraltar	Guernsey
Isle of Man	Jersey
Liechtenstein	

APPENDIX C

FORMS

C.1 INTRODUCTION LETTER

To: [Regulated person concerned]

Full name of applicant (prospective customer): _____

Title (Mr/Mrs/Miss/Ms): _____

Full address including postcode: _____

I/we are a *regulated person/foreign regulated person* as defined in Anguilla's Anti-Money Laundering Regulations, 2006 and we are providing this introduction in accordance with the Guidance Notes issued by the Financial Services Commission.

Please complete either Option 1 (by deleting either A1 or A2 and either B1 or B2) or Option 2 (by deleting Option 1 and setting out the reasons as requested).

OPTION 1:

A1: The above applicant was an existing customer of ours at [*date*]; OR

A2: We have verified the identity of the Applicant and his/her/its name and address as set out above corresponds with our records; AND

B1: The applicant is applying on his own behalf and not as nominee, trustee or in a fiduciary capacity for any other person.

B2: The applicant is acting as nominee, trustee or in a fiduciary capacity for other persons whose identity has been established by us and appropriate documentary evidence to support the identification is held by us and can be produced on demand.

OPTION 2:

C: We have not verified the identity of the above applicant for the following reasons:

Full name of Introducer _____

Signed: _____

Full name: _____ Position: _____

C.2 REQUEST FOR VERIFICATION OF CUSTOMER IDENTITY

To: [Receiving Institution]
From: [Regulated person sending letter]

Dear Sirs,

REQUEST FOR VERIFICATION

In accordance with Anguilla's Anti-Money Laundering Regulations and Guidance Notes, we write to request your verification of the identity of our prospective customer detailed below.

Full name of prospective customer: _____

Title (Mr/Mrs/Miss/Ms): _____

Address including postcode: _____

Date of birth: _____ Account No. (if known): _____

Example of customer's signature _____

Please respond positively and promptly by returning the tear-off portion below.

Signed: _____

Full name: _____ Position: _____

To: [The Manager, Originating Institution]

From: [Receiving Institution]

Request for verification of the identity of [title and full name of customer]

With reference to your enquiry dated we:

1. Confirm that the above customer *is/is not known to us.

2. *Confirm/cannot confirm the address shown in your enquiry.
3. *Confirm/cannot confirm that the signature reproduced in your enquiry appears to be that of the above customer.

The above information is given in strict confidence, for your private use only, and without any guarantee or responsibility on the part of this institution or its officials.

Signed: _____

Full name: _____

Position: _____

*DELETE AS APPLICABLE.

C.3 AUTHORITY TO DEAL BEFORE CONCLUSION OF VERIFICATION

Name of regulated person: _____

Name and address of introducer (if appropriate): _____

Introducer's regulator (if appropriate): _____

Name and address of prospective client: _____

By reason of the exceptional circumstances set out below and notwithstanding that the identity of the above prospective client has not been verified in accordance with the Anti Money Laundering Regulations, 2006 and the Guidance Notes, I authorise:

[Action to be undertaken, e.g. opening of account]

The exceptional circumstances are as follows:

I confirm that a copy of this authority has been delivered to the MLRO.

Signed: _____

Name: _____

Position: _____

Date: _____

[Note that this form must be signed by a Senior Manager of the regulated person.]

C.4 INTERNAL REPORT FORM

Name of client/prospective client: _____

Full account name (if appropriate) [existing client]: _____

Account No. or Internal reference no (if appropriate): _____

Date account opened or client accepted [existing client]: _____

Date client made application for business [prospective client]: _____

Date and place of birth: _____ Nationality: _____

Full address: _____

Passport/Driving licence no. (specifying which): _____

Other evidence of identification:
(attach copies of any references)

Details of transaction or proposed transaction arousing suspicion:

As relevant/appropriate: Amount Currency Date of Receipt Sources of funds

Other relevant information:

Name and position of employee making report: _____

Signature of employee making report: _____ Date: _____

Name of MLRO: _____

Decision [MLRO should briefly set out the reason for regarding the transactions as suspicious or, if he decides against making a report, his reasons for that decision:

Signature of MLRO: _____ Date: _____

Name of Senior Manager: _____

Approved/Rejected (delete as appropriate) Date: _____

Reasons: _____

Date report made to Authority (if appropriate): _____

C.5 SUSPICIOUS TRANSACTION REPORT TO REPORTING AUTHORITY

ANGUILLA MONEY LAUNDERING REPORTING AUTHORITY

Suspicious Transaction or Activity Report

Notes: 1. Complete a separate form in respect of each suspect person, company or business.
 2. Either type or print this form.
 3. When submitting this form attach all relevant material and use an additional page if necessary.
 4. Send this form when complete to:
 (address etc)

For completion by Authority
 MLRA Ref. No.:
 Reporting Entity Ref:
 Date report received:
 Report received by (post/fax etc):
 Category:
 Date acknowledgement sent:
 Action taken:

Reporting Entity Details

Name and address of reporting entity: _____

Telephone No: _____ Fax No: _____

Contact at reporting authority: _____

Disclosure Subject

Name: _____

Full address: _____

Telephone No (H): _____ Tel No (W): _____ Fax No: _____

Date and place of birth: _____

Nationality: _____ Occupation: _____

Name and address of employer (if appropriate): _____

Existing client/Prospective client/Other*

If other, provide details: _____

If Client or Prospective Client, date accepted or made application: _____

Details of identification evidence obtained: _____

Other relevant information e.g. associated persons: _____

If previous report(s) made in respect of this subject, provide MLRA ref no(s): _____

If this report is linked to other reports, please provide details: _____

Details of transaction or proposed transaction arousing suspicion:

Reasons for Suspicion:

PLEASE CONTINUE OVERLEAF

Name of person completing report: _____

Position in reporting entity: _____

MLRO of reporting entity (if different): _____

Telephone No: _____ Date: _____

Signed: _____

C.6 SAMPLE LETTER OF ACKNOWLEDGEMENT

ANGUILLA MONEY LAUNDERING REPORTING AUTHORITY

[Address etc]

[Date]

[Name and Address of reporting entity]

MLRA Ref. No:

Dear Sir/Madam,

Acknowledgement of suspicious transaction/activity report

I acknowledge receipt of the information supplied by you to the Anguilla Money Laundering Reporting Authority under the provisions of the Proceeds of Criminal Conduct Act, 2000 concerning *[name of disclosure subject(s)]*.

As the enquiry progresses, contact will be maintained on the progress of the enquiries.

Thanking you for your continued co-operation.

Yours faithfully

[Name]

Anguilla Money Laundering Reporting Authority

C.7 SAMPLE FEEDBACK REPORT

ANGUILLA MONEY LAUNDERING REPORTING AUTHORITY

[Address etc]

[Date]

[Name and Address of reporting entity]

MLRA Ref. No:

Dear Sir/Madam,

Suspicious Transaction/Activity Feedback

Following the receipt of the disclosure of the above reference number made by you and the subsequent enquiries made by the Authority, I enclose for your information a summary of the present position of the case (see below).

The current status shown, whilst accurate at the time of making this report, should not be treated as a basis for subsequent decision without reviewing the up-to-date position. Please do not hesitate to contact the Authority should you require any further information or assistance.

Yours faithfully,

[Name]

Anguilla Money Laundering Reporting Authority

STATUS REPORT:

Still under active investigation

Investigation concluded