

Regulation of Anguilla: 27/2009

Gazette Dated: 30 September, 2009

THE PROCEEDS OF CRIME ACT, 2009 (ACT NO. 13/2009)
**ANTI-MONEY LAUNDERING AND TERRORIST FINANCING
(AMENDMENT) REGULATIONS, 2009**

These Regulations are enabled under section 158 of the Proceeds of Crime Act, 2009

Amendment of section 1

1. (1) Section 1(1) of the Anti-Money Laundering and Terrorist Financing Regulations, 2009 (referred to in these Regulations as “the principal Regulations”) is amended—

- (a) in the definition of “Code”, by deleting “the Anti-Money Laundering and Prevention of Terrorist Financing Code” and substituting “an Anti-Money Laundering and Prevention of Terrorist Financing Code”;
- (b) by deleting the definition of “compliance officer”;
- (c) by deleting the definition of “correspondent banking relationship” and substituting the following definition—

““correspondent banking” has the meaning specified in section 6(1);”
- (d) by deleting the definition of “financial services enactment”;
- (e) in the definition of “foreign regulatory authority”—
 - (i) by deleting “jurisdiction” and substituting “country”, and
 - (ii) by inserting after “the Commission”, the words “or another relevant supervisory authority”;
- (f) in the definition of “independent legal professional” by deleting “participating in financial or real estate transactions concerning” and substituting “preparing for or carrying out transactions for a customer in relation to”;
- (g) in the definition of “introducer”, by deleting “relevant person” and substituting “service provider”;
- (h) by inserting the following definition after the definition of “introducer”—

““money laundering compliance officer” means the person appointed by a service provider as its money laundering compliance officer under section 20;”;
- (i) in the definition of “regulated exchange”, by inserting after “World Federation of Exchanges”, the words “or such other exchange as may be specified as a recognised exchange in a Code”;

- (j) by deleting the definition of “relevant business” and substituting the following definition—

““relevant business” means a business which, if carried on by a person, would result in that person being a service provider within the meaning of Schedule 2;”; and

- (k) by deleting the definitions of “supervisory authority” and “terrorist financing”.

(2) Section 1(2) of the principal Regulations is amended—

- (a) by deleting “jurisdictions” and substituting “countries”; and
- (b) by inserting after “prevention of money laundering”, the words “and terrorist financing”.

Amendment of section 2

2. Section 2(3) of the principal Regulations is amended—

- (a) by inserting after “deemed not”, the word “to”; and
- (b) by deleting “body corporate” and substituting “company”.

Amendment of section 3

3. Section 3(2)(a) of the principal Regulations is amended by inserting after “carried”, the word “out”.

Amendment of section 5

4. Section 5 of the principal Regulations is amended—

- (a) in paragraph (1)(c), by deleting the semi-colon at the end of the paragraph and substituting a full stop; and
- (b) in paragraph (2)(b), by inserting a semi-colon at the end of the paragraph.

Amendment of section 7

5. Section 7 of the principal Regulations is amended—

- (a) in paragraph (a), by deleting “corporate body” and substituting “company”;
- (b) in paragraphs (a) and (c), by deleting “jurisdiction” wherever it occurs and substituting “country”; and
- (c) in paragraph (b), by deleting “fall within a category of business specified in Schedule 1, paragraphs (a) to (i)” and substituting “be a regulated business or would result in the person falling within the definition of “independent legal professional””.

Amendment of section 10

6. Section 10 of the principal Regulations is amended—

- (a) in subparagraph (1)(b)(ii), by inserting “and” after the semi-colon;
- (b) in subparagraph (2)(b), by deleting “and” after the semi-colon and substituting “or”; and
- (c) in subparagraph (5)(c), by deleting “the” immediately before the word “contact”.

Amendment of section 11

7. Section 11(2) of the principal Regulations is amended, by deleting “section 10(4) or (5)” and substituting “section 10(5) or (6)”.

Amendment of section 12

8. Section 12(2) of the principal Regulations is amended—

- (a) by deleting “service provider must” and substituting “service provider shall”;
- (b) in paragraph (b), by deleting “or territory”; and
- (c) in subparagraph (e)(iii), by deleting “described in subparagraph (ii)” and substituting “for whom a customer is acting”.

Amendment of section 13

9. Section 13 of the principal Regulations is amended—

- (a) by inserting the following subsection after subsection (1)—

“(1A) Before relying on an introducer or intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner, a service provider shall obtain adequate assurance in writing from the intermediary or introducer that—

- (a) the intermediary or introducer has applied the customer due diligence measures for which the service provider intends to rely on it;
- (b) the intermediary or introducer is required to keep, and does keep, a record of the evidence of identification relating to each of the customers of the intermediary or introducer;
- (c) the intermediary or introducer will, without delay, provide the information in that record to the service provider at the service provider’s request; and
- (d) the intermediary or introducer will, without delay, provide the information in the record for provision to the Commission, where requested by the Commission.”; and

- (b) in subsection (3), by deleting “relevant person” and substituting “service provider”.

Amendment of section 14

10. Section 14 of the principal Regulations is amended—

- (a) in subparagraph (1)(a)(iv) by deleting “body corporate” and substituting “company”; and
- (b) in subsection (2), by deleting the semi-colon at the end of the subsection and substituting a full stop.

Amendment of section 16

11. Section 16 of the principal Regulations is amended—

- (a) in subsection (1)—
 - (i) by deleting “service provider must” and substituting “service provider shall”, and

- (ii) in paragraph (f), by inserting “and” after the semi-colon;
- (b) in subparagraph (2)(c)(iii), by deleting “or territory”;
- (c) in subsection (3), by deleting “must communicate” and substituting “shall communicate”;
- (d) in subsection (4)—
 - (i) by deleting “service provider must” and substituting “service provider shall”, and
 - (ii) by deleting “section 18” and substituting “section 19”; and
- (e) by redesignating the second subsection (6) as subsection (7).

Amendment of section 17

12. Section 17 of the principal Regulations is amended—

- (a) in subsection (1)—
 - (i) by deleting “service provider must” and substituting “service provider shall”; and
 - (ii) in paragraph (a), by inserting after “enables”, the word “them”;
- (b) in subsection (3), by deleting “paragraph (2)(b)” and substituting “paragraph (2)(c)”;
- (c) in subsection (4), by deleting “must keep” and substituting “shall keep”;
- (d) by deleting subsection (5) and substituting the following subsection—

“(5) Where a service provider (the “first service provider”) is an introducer or intermediary and has given the assurance that is required under section 13(1A) to another service provider (the “second service provider”), the first service provider shall make available to the second service provider, at the second service provider’s request, a copy of the evidence of identification that the first service provider is required to keep under this section, such evidence being the evidence that is referred to in section 13(1A).”;
- (e) in subsection (6), by deleting “Subsections (4) and (5) do not apply” and substituting “Subsection (5) does not apply”; and
- (f) by redesignating the second subsection (6) as subsection (7) and subsection (7) as subsection (8).

Amendment of section 18

13. Section 18 of the principal Regulations is amended—

- (a) in subsection (1)(b), by deleting “subsection 17(2)(b)” and substituting “section 17(2)(b), (c), (d) and (e)”; and
- (b) in subparagraph (10)(b)(i), by inserting “or” after the semi-colon.

Amendment of section 19

14. Section 19 of the principal Regulations is amended—

- (a) in subsection (1)—
 - (i) by deleting “service provider must” and substituting “service provider shall”,

- (ii) in paragraph (a), by deleting “and” after the semi-colon,
 - (iii) in paragraph (b), by inserting “and” after the semi-colon, and
 - (iv) in paragraph (c), by deleting “or a supervisory authority”; and
- (b) in subsection (2), by deleting “service provider must” and substituting “service provider shall”.

Amendment of section 20

15. Section 20 of the principal Regulations is amended—

- (a) in subsection (1), by deleting “must appoint” and substituting “shall appoint”;
- (b) by deleting subsection (3) and substituting the following subsection—
 - “(3) A service provider shall ensure that the individual appointed as money laundering compliance officer under this section—
 - (a) is of an appropriate level of seniority; and
 - (b) has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as money laundering compliance officer.”;
- (c) in subsections (5) and (6), by deleting “service provider must” and substituting “service provider shall”; and
- (d) in subsection (6), by deleting “Commission” and substituting “relevant supervisory authority”.

Amendment of section 21

16. Section 21 of the principal Regulations is amended—

- (a) in subsections (1), (2), (3) and (4), by deleting “service provider must” and substituting “service provider shall”;
- (b) in subsection (1)—
 - (i) in paragraph (b), by deleting “considering” and substituting “consider”, and
 - (ii) in paragraph (c), by deleting “submitting” and substituting “submit”; and
- (c) in subsection (4), by deleting “Commission” and substituting “relevant supervisory authority”.

Amendment of section 23

17. Section 23 of the principal Regulations is amended by deleting “the purposes of section 160(a)(ii)” and substituting “service providers who are not regulated persons for the purposes of section 160(1)”.

Insertion of sections 23A, 23B and 23C

18. The following sections are inserted after section 23 of the Act—

“Customer information

23A. (1) For the purposes sections 142 and 143 of the Act, “customer information”, in relation to a person (“the specified person”) and a regulated person, is information concerning

whether the specified person holds, or has held, an account or accounts at the regulated person, whether solely or jointly with another, and, if so, the following information as to—

- (a) the account number or numbers;
- (b) the specified person's full name;
- (c) where the specified person is an individual, the individual's
 - (i) date of birth; and
 - (ii) most recent address, any previous address, any postal address and any previous postal address;
- (d) where the specified person is a company—
 - (i) the country where the company is incorporated or is otherwise constituted, established or registered; and
 - (ii) the address of the registered office, any previous registered office, any business address, any previous business address, any postal address and any previous postal address;
- (e) where the specified person is a partnership or unincorporated body of persons, the information specified in paragraph (c) with respect to each individual authorised to operate the account, whether solely or jointly;
- (f) such evidence of identity with respect to the specified person as has been obtained by the regulated person;
- (g) the date or dates on which the specified person began to hold the account or accounts and, if the specified person has ceased to hold the account or any of the accounts, the date or dates on which the person did so;
- (h) the full name of any person who holds, or has held, an account at the financial institution jointly with the specified person;
- (i) the account number or numbers of any other account or accounts held at the financial institution to which the specified person is a signatory and details of the person holding the other account or accounts;
- (j) the full name and the information contained in paragraph (c), (d) or (e), as relevant, of any person who is a signatory to an account specified in paragraph (i).

Prescribed amounts

23B. The following amounts are prescribed for the purposes of the Act—

- (a) application of section 32(1) of the Act (minimum amount remaining to be paid under a confiscation order for discharge), the amount prescribed is \$1,000;
- (b) discharge under section 33 of the Act, the amount prescribed is \$100;
- (c) minimum threshold for the purposes of section 103 of the Act, the amount prescribed is \$500;
- (d) definition of “recoverable cash” under section 106 of the Act, the amount prescribed is \$500.

Penalties, disciplinary action

23C. For the purposes of section 34(4)(b) of the Financial Services Commission Act F28, the maximum penalty that may be imposed by the Commission for a breach of these Regulations or the Code is \$50,000.”

Amendment of section 25

19. Section 25 of the principal Regulations is amended—

(a) by renumbering the current provision as subsection (1); and

(b) by inserting after the current provision, the following subsection—

“(2) The Guidance Notes on the Prevention of Money Laundering issued by the Governor under section 4 of the Money Laundering Reporting Authority Act M100 on 24 July 2007 are revoked with effect from 31 July 2009.”.

Amendment of section 26

20. Section 26 of the principal Regulations is amended by deleting “Ant-Money Laundering and Terrorist Financing Regulations, 2009” and substituting “Anti-Money Laundering and Terrorist Financing Regulations, 2009”.

Amendment of Schedule 2

21. Schedule 2 of the principal Regulations is amended in paragraph 4, by deleting “paragraph (a) or (b)” and substituting “paragraph 3(a) or 3(b)”.

Citation

22. These Regulations may be cited as the Anti-Money Laundering and Terrorist Financing (Amendment) Regulations, 2009.

Made this 29th day of September 2009

Alistair Harrison

GOVERNOR OF ANGUILLA