

**Regulation of Anguilla: 15/2009**

Gazette Dated: 17 July 2009

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THE PROCEEDS OF CRIME ACT, 2009 (ACT NO. 13/2009)

**ANTI-MONEY LAUNDERING AND TERRORIST FINANCING REGULATIONS**

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

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## PART 1

**PRELIMINARY PROVISIONS****Interpretation**

1. (1) In these Regulations—

“Act” means the Proceeds of Crime Act, 2009;

“bank” means a person that carries on banking business within the meaning of the Banking Act c. B 11 or the Trust Companies and Offshore Banking Act c. T 60, whether or not that business is carried on in, or from within, Anguilla;

“beneficial owner” has the meaning specified in section 2;

“branch” includes a representative or contact office;

“business relationship” means a business, professional or commercial relationship between a service provider and a customer which is expected by the service provider, at the time when contact is established, to have an element of duration;

“cash” means notes, coins, postal orders and travellers’ cheques in any currency;

“Code” means the Anti-Money Laundering and Prevention of Terrorist Financing Code issued under section 159 of the Act;

“compliance officer” means the person appointed by a service provider as its compliance officer under section 20;

“correspondent banking relationship” has the meaning specified in section 6(1);

“customer due diligence measures” has the meaning specified in section 4;

“domestic bank” means a person that holds a licence issued under the Banking Act c. B 11;

“FATF” means the international body known as the Financial Action Task Force on Money Laundering;

“FATF Recommendations” means—

(a) the Forty Recommendations, and

(b) the 9 Special Recommendations,

issued by the FATF, incorporating the amendments made on 22 October 2004 and such other amendments as may, from time-to-time be made;

“financial business” means a service provider—

(a) who falls within paragraph 1(a), (b), (c) or (d) or paragraph 2 of Schedule 2; and

(b) who is—

(i) a company incorporated in Anguilla;

- (ii) a partnership based in Anguilla;
- (iii) an individual resident in Anguilla; or
- (iv) any other person having its principal or head office in Anguilla.

“financial services enactment” has the meaning specified in the Financial Services Commission Act c. F28;

“foreign regulated person” has the meaning specified in section 7;

“foreign regulatory authority”, means an authority in a country outside Anguilla which exercises in that jurisdiction supervisory functions substantially corresponding to those of the Commission with respect to enforcing compliance with the Act, these Regulations and the Code;

“high value dealer” means a person who, by way of business, trades in goods, including precious metals and precious stones, when he receives, in respect of any transaction, a payment or payments in cash of at least \$35,000, or the equivalent in a currency other than Eastern Caribbean dollars, whether the transaction is executed in a single operation or in several linked operations;

“independent legal professional” means a firm or sole practitioner who, by way of business, provides legal or notarial services to other persons, when participating in financial or real estate transactions concerning—

- (a) the buying and selling of real estate and business entities;
- (b) the managing of client money, securities or other assets;
- (c) the opening or management of bank, savings or securities accounts;
- (d) the organisation of contributions necessary for the creation, operation or management of companies; or
- (e) the creation, operation or management of trusts, foundations, companies or similar structures, excluding any activity that requires a licence under the Trust Companies and Offshore Banking Act c. T 60 or the Company Management Act c. C 75;

“intermediary” means a person who has or seeks to establish a business relationship or to carry out an occasional transaction on behalf of his customer with a service provider, so that the intermediary becomes a customer of the service provider;

“introducer” means a person who has a business relationship with a customer and who introduces that customer to a service provider with the intention that the customer will form a business relationship or conduct an occasional transaction with the service provider so that the introducer’s customer also becomes a customer of the relevant person;

“money laundering disclosure” means a disclosure under section 128, 129 or 130 of the Act;

“money laundering reporting officer” or “MLRO” means the person appointed by a service provider as its money laundering reporting officer under section 21;

“occasional transaction” has the meaning specified in section 3;

“ongoing monitoring” has the meaning specified in section 4(5);

“politically exposed person” has the meaning specified in section 5;

“recognised exchange” means an exchange that is a member of the World Federation of Exchanges;

“regulated business” means a business for which a regulatory licence is required;

“regulated person” means a person who holds a regulatory licence;

“regulatory licence” means a licence specified in Schedule 1;

“relevant business” means—

- (a) a business specified in Schedule 2;
- (b) the business of an independent legal professional; and
- (c) the business of a high value dealer;

“service provider” means a person specified in Schedule 2;

“shell bank” has the meaning specified in section 6(3);

“sole trader” means an individual carrying on a relevant business who does not in the course of doing so—

- (a) employ any other person; or
- (b) act in association with any other person;

“supervisory authority”, in relation to a service provider, means the supervisory authority designated for that service provider in section 23;

“Terrorism (UN) Order” means the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;

“terrorist financing” means an offence under—

- (a) article 6, 7, 8, 9 or 18 of the Anti-terrorist Financing Order;
- (b) article 3, 4, 5(9), 5(10) or 6 of the Terrorism (UN) Order;
- (c) article 7, 8(9), 8(10) or 9 of the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002;

“terrorist financing disclosure” means a disclosure under—

- (a) article 10 or Part 1 of Schedule 1 of the Anti-terrorist Financing Order;
- (b) article 8 of the Terrorism (UN) Order; or
- (c) article 10 of the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002; and

“third party” means a person for whom a customer is acting.

(2) For the purposes of the definition of “foreign regulated person”, the Code may specify jurisdictions that may be regarded as having legal requirements for the prevention of money laundering that are consistent with the requirements of the FATF Recommendations.

(3) In these Regulations, unless the context otherwise requires, “customer” includes a prospective customer.

### **Meaning of beneficial owner**

2. (1) Subject to subsection (3), each of the following is a beneficial owner of a legal person, a partnership or an arrangement—

- (a) an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner; and
- (b) an individual who exercises ultimate control over the management of the legal person, partnership or arrangement, whether alone or jointly with any other person or persons.

(2) For the purposes of subsection (1), it is immaterial whether an individual’s ultimate ownership or control of a legal person, partnership or arrangement is direct or indirect.

(3) An individual is deemed not be the beneficial owner of a body corporate, the securities of which are listed on a recognised exchange.

(4) In this section, an “arrangement” includes a trust.

### **Meaning of “occasional transaction”**

3. (1) A transaction is an occasional transaction if the transaction is carried out otherwise than as part of a business relationship, and is carried out as—

- (a) a single transaction that amounts to the sum specified in subsection (2), or more; or
- (b) two or more linked transactions that, in total amount to the sum specified in subsection (2), or more, where—
  - (i) it appears at the outset to any person handling any of the transactions that the transactions are linked; or
  - (ii) at any later stage it comes to the attention of any person handling any of those transactions that the transactions are linked.

(2) The amount specified for the purposes of subsection (1) is—

- (a) in the case of a transaction, or linked transactions, carried in the course of a money services business, \$2,500; or
- (b) in the case of any other transaction, or linked transactions, \$37,500.

### **Meaning of “customer due diligence measures” and “ongoing monitoring”**

4. (1) “Customer due diligence measures” are measures for—

- (a) identifying a customer;
- (b) determining whether the customer is acting for a third party and, if so, identifying the third party;
- (c) verifying the identity of the customer and any third party for whom the customer is acting;
- (d) identifying the identity of each beneficial owner of the customer and third party, where either the customer or third party, or both, are not individuals;

- (e) taking reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of the customer and third party so that the service provider is satisfied that it knows who each beneficial owner is including, in the case of a legal person, partnership, foundation, trust or similar arrangement, taking reasonable measures to understand the ownership and control structure of the legal person, partnership, foundation, trust or similar arrangement; and
- (f) obtaining information on the purpose and intended nature of the business relationship or occasional transaction.

(2) Customer due diligence measures include—

- (a) where the customer is not an individual, measures for verifying that any person purporting to act on behalf of the customer is authorised to do so, identifying that person and verifying the identity of that person; and
- (b) where the service provider carries on insurance business, measures for identifying each beneficiary under any long term or investment linked policy issued or to be issued by the service provider and verifying the identity of each beneficiary.

(3) Customer due diligence measures do not fall within this section unless they provide for verifying the identity of persons whose identity is required to be verified, on the basis of documents, data or information obtained from a reliable and independent source.

(4) Where customer due diligence measures are required by this section to include measures for identifying and verifying the identity of the beneficial owners of a person, those measures are not required to provide for the identification and verification of any individual who holds shares in a company that is listed on a recognised exchange.

(5) “Ongoing monitoring” of a business relationship means—

- (a) scrutinising transactions undertaken throughout the course of the relationship, including where necessary the source of funds, to ensure that the transactions are consistent with the service provider’s knowledge of the customer and his business and risk profile; and
- (b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date and relevant by undertaking reviews of existing records.

**Meaning of “politically exposed person”**

**5.** (1) “Politically exposed person” means a person who is—

- (a) an individual who is, or has been, entrusted with a prominent public function by—
  - (i) a country other than Anguilla; or
  - (ii) an international body or organization;
- (b) an immediate family member of a person referred to in paragraph (a);
- (c) a known close associate of a person referred to in paragraph (a);

(2) Without limiting paragraph (1)(a), the following are politically exposed persons within the meaning of that subsection—

- (a) heads of state, heads of government and senior politicians;

- (b) senior government or judicial officials
- (c) high-ranking officers in the armed forces;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors and chargés d'affaires;
- (f) senior executives of state-owned corporations; and
- (g) important political party officials.

(3) Without limiting paragraph (1)(b), the following are immediate family members of a person specified in paragraph (1)(a)—

- (a) a spouse;
- (b) a partner, that is an individual considered by his or her national law as equivalent to a spouse;
- (c) children and their spouses or partners, as defined in paragraph (b);
- (d) parents;
- (e) grandparents and grandchildren; and
- (f) siblings.

(4) Without limiting paragraph (1)(c), the following are close associates of a person specified in paragraph (1)(a)—

- (a) any person known to maintain a close business relationship with that person or to be in a position to conduct substantial financial transactions on behalf of the person;
- (b) any person who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with that person; and
- (c) any person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of that person.

(5) For the purposes of deciding whether a person is a close associate of a person referred to in paragraph (1)(a), a service provider need only have regard to information which is in that person's possession or is publicly known.

#### **Meaning of “shell bank” and “correspondent banking”**

**6.** (1) “Correspondent banking” means the provision of banking services by one bank, (the “correspondent bank”) to another bank (the “respondent bank”).

(2) Without limiting subsection (1), banking services includes—

- (a) cash management, including establishing interest-bearing accounts in different currencies;
- (b) international wire transfers of funds;
- (c) cheque clearing;

- (d) payable-through accounts; and
  - (e) foreign exchange services.
- (3) A “shell bank” is a bank that—
- (a) is incorporated and licensed in a country in which it has no physical presence involving meaningful decision-making and management; and
  - (b) is not subject to supervision by the Commission, the Eastern Caribbean Central Bank or a foreign regulatory authority, by reason of its membership of, or affiliation to, a group that is subject to effective consolidated supervision.

### **Meaning of “foreign regulated person”**

7. “Foreign regulated person” means a person—

- (a) that is incorporated in, or if it is not a corporate body, has its principal place of business in, a jurisdiction outside Anguilla (its “home jurisdiction”);
- (b) that carries on business outside Anguilla that, if carried on in Anguilla, would fall within a category of business specified in Schedule 1, paragraphs (a) to (i);
- (c) that, in respect of the business referred to in paragraph (b)—
  - (i) is subject to legal requirements in its home jurisdiction for the prevention of money laundering and terrorist financing that are consistent with the requirements of the FATF Recommendations, for the time being issued, for that business; and
  - (ii) is subject to effective supervision for compliance with those legal requirements by a foreign regulatory authority.

### **Scope of Regulations**

8. These Regulations apply to all persons who are service providers within the meaning of Schedule 2.

### **Application of Regulations and Code outside Anguilla**

9. (1) Subject to subsections (2), (3) and (4), a financial business that has a branch located in a foreign country or has a subsidiary incorporated in a foreign country shall, to the extent that the laws of the foreign country permit—

- (a) comply with these Regulations and the Code in respect of any business carried on through the branch; and
- (b) ensure that these Regulations and the Code are complied with by the subsidiary with respect to any business that it carries on.

(2) A financial business shall have particular regard to ensure that subsection (1) is complied with where the foreign country in which its branch or subsidiary is situated does not apply, or insufficiently applies, the FATF Recommendations.

(3) If the foreign country in which a branch or subsidiary of a financial business is situated has more stringent standards with respect to the prevention of money laundering and terrorist financing than are provided for in these Regulations and the Code, the financial business shall ensure that the more stringent requirements are complied with by its branch or subsidiary.

(4) Where the laws of a foreign country do not permit a branch or subsidiary of a financial business to comply with subsection (1), the financial business shall—

- (a) notify the Commission in writing; and
- (b) to the extent that the laws of the foreign country permit, apply alternative measures to ensure compliance with the FATF 40 and to deal effectively with the risk of money laundering and terrorist financing.

## PART 2

### CUSTOMER DUE DILIGENCE

#### **Application of customer due diligence measures and ongoing monitoring**

**10.** (1) Subject to subsections (5) and (6), a service provider shall apply customer due diligence measures—

- (a) before the service provider establishes a business relationship or carries out an occasional transaction;
- (b) where the service provider—
  - (i) suspects money laundering or terrorist financing; or
  - (ii) doubts the veracity or adequacy of documents, data or information previously obtained under its customer due diligence measures or when conducting ongoing monitoring;
- (c) at other appropriate times to existing customers as determined on a risk-sensitive basis.

(2) Without limiting subparagraph (1)(b)(ii), a service provider shall obtain identification information—

- (a) when there is a change in the identification information of a customer;
- (b) when there is a change in the beneficial ownership of a customer; and
- (c) when there is a change in the third parties, or the beneficial ownership of third parties.

(3) A service provider shall conduct ongoing monitoring of a business relationship.

(4) In applying customer due diligence measures and conducting ongoing monitoring, a service provider shall—

- (a) assess the risk that any business relationship or occasional transaction involves, or will involve, money laundering or terrorist financing, depending upon the type of customer, business relationship, product or transaction;
- (b) be able to demonstrate to the relevant supervisory authority—

- (i) that the extent of the customer due diligence measures applied in any case is appropriate having regard to the circumstances of the case, including the risks of money laundering and terrorist financing; and
- (ii) that it has obtained appropriate information to carry out the risk assessment required under paragraph (a).

(5) A service provider may complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship if—

- (a) it is necessary not to interrupt the normal conduct of business;
- (b) there is little risk of money laundering or terrorist financing occurring as a result; and
- (c) verification of identity is completed as soon as reasonably practicable after the contact with the customer is first established.

(6) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that, before verification has been completed—

- (a) the account is not closed; and
- (b) transactions are not carried out by or on behalf of the account holder, including any payment from the account to the account holder.

(7) A service provider who contravenes this section is guilty of an offence and is liable on summary conviction, to a fine of \$100,000.

#### **Requirement to cease transactions or terminate relationship**

**11.** (1) If a service provider is unable to apply customer due diligence measures before the establishment of a business relationship or before the carrying out of an occasional transaction in accordance with these Regulations, the service provider shall not establish the business relationship or carry out the occasional transaction.

(2) If section 10(4) or (5) apply and a service provider is unable to complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship, the service provider shall terminate the business relationship with the customer.

(3) If a service provider is unable to undertake ongoing monitoring with respect to a business relationship, the service provider shall terminate the business relationship.

(4) If subsection (1), (2) or (3) applies with respect to a service provider, the service provider shall consider whether he is required to make a money laundering disclosure or a terrorist financing disclosure.

(5) Subsections (1), (2) and (3) do not apply where the service provider is a lawyer and is in the course of ascertaining the legal position for that person's client or performing the task of defending or representing the client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

(6) If the service provider has made a money laundering or terrorist financing disclosure, subsections (1), (2) and (3) do not apply to the extent that the service provider is acting—

- (a) in the case of a money laundering disclosure, with the consent or deemed consent of the Reporting Authority; or

- (b) in the case of a terrorist financing disclosure made under the Anti-terrorist Financing Order, with the consent of a constable, where such consent may lawfully be given.

(7) A service provider who contravenes this section is guilty of an offence and is liable on summary conviction, to a fine of \$100,000.

### **Enhanced customer due diligence and ongoing monitoring**

**12.** (1) For the purposes of these Regulations, “enhanced customer due diligence measures” and “enhanced ongoing monitoring” mean customer due diligence measures, or ongoing monitoring, that involve specific and adequate measures to compensate for the higher risk of money laundering or terrorist financing.

(2) A service provider must, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring—

- (a) where the customer has not been physically present for identification purposes;
- (b) where the service provider has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations;
- (c) where the service provider is a domestic bank that has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside Anguilla;
- (d) where the service provider has or proposes to have a business relationship with, or to carry out an occasional transaction with, a politically exposed person;
- (e) where any of the following is a politically exposed person—
  - (i) a beneficial owner of the customer;
  - (ii) a third party for whom a customer is acting;
  - (iii) a beneficial owner of a third party described in subparagraph (ii);
  - (iv) a person acting, or purporting to act, on behalf of the customer.
- (f) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

(3) A service provider who contravenes this section is guilty of an offence and is liable on summary conviction, to a fine of \$100,000.

### **Reliance on introducers and intermediaries**

**13.** (1) Subject to any requirements in the Code, a service provider may rely on an introducer or an intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner, if—

- (a) the introducer or intermediary is a regulated person or a foreign regulated person; and
- (b) the introducer or intermediary consents to being relied on.

(2) Where a service provider relies on an introducer or intermediary to apply customer due diligence measures, the service provider remains liable for any failure to apply those measures.

(3) This section does not prevent a service provider from applying customer due diligence measures by means of an outsourcing service provider or agent provided that the relevant person remains liable for any failure to apply such measures.

#### **Exceptions to due diligence requirements**

**14.** (1) A service provider is not required to apply customer due diligence measures before establishing a business relationship or carrying out an occasional transaction where—

(a) he has reasonable grounds for believing that the customer is—

(i) a regulated person;

(ii) a foreign regulated person;

(iii) a public authority in Anguilla; or

(iv) a body corporate, the securities of which are listed on a recognised exchange.

(b) in the case of life insurance business, the product is a life insurance contract where the annual premium is no more than \$2,000 or where a single premium of no more than \$5,000 is paid.

(2) Subsection (1)(a) does not apply with respect to any third party for whom the customer may be acting or with respect to the beneficial owners of such a third party;

(3) Subsection (1) does not apply if the service provider suspects money laundering or terrorist financing.

#### **Shell banks and anonymous accounts**

**15.** (1) A bank that carries on banking business in or from within Anguilla—

(a) shall not enter into or continue a correspondent banking relationship with a shell bank; and

(b) shall take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship with a bank that is known to permit its accounts to be used by a shell bank.

(2) A service provider shall not set up or maintain an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious.

(3) A bank that contravenes subsection (1) or a service provider that contravenes subsection (2) is guilty of an offence and is liable on summary conviction, to a fine of \$100,000.

### **PART 3**

#### **POLICIES, SYSTEMS AND CONTROLS, RECORD KEEPING AND TRAINING**

##### **Policies, systems and controls to prevent and detect money laundering and terrorist financing**

**16.** (1) Subject to subsection (5), a service provider must establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls relating to—

(a) customer due diligence measures and ongoing monitoring;

- (b) the reporting of disclosures;
- (c) record-keeping;
- (d) the screening of employees;
- (e) internal controls;
- (f) risk assessment and management;
- (g) the monitoring and management of compliance with, and the internal communication of, its policies, systems and controls to prevent and detect money laundering and terrorist financing, including those specified in paragraphs (a) to (f).

(2) The policies, systems and controls referred to in paragraph (1) must include policies, systems and controls which provide for—

- (a) the identification and scrutiny of—
  - (i) complex or unusually large transactions;
  - (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
  - (iii) any other activity which the service provider regards as particularly likely by its nature to be related to the risk of money laundering or terrorist financing;
- (b) the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which are susceptible to anonymity;
- (c) determining whether—
  - (i) a customer, any third party for whom the customer is acting and any beneficial owner of the customer or third party, is a politically exposed person;
  - (ii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country that does not apply, or insufficiently applies, the FATF Recommendations;
  - (iii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country or territory that is subject to measures for purposes connected with the prevention and detection of money laundering or terrorist financing, imposed by one or more countries or sanctioned by the European Union or the United Nations.

(3) A service provider with any subsidiary or branch that carries on a relevant business must communicate to that subsidiary or branch, whether in or outside Anguilla, the service provider's policies and procedures maintained in accordance with this section.

(4) A service provider must maintain adequate procedures for monitoring and testing the effectiveness of—

- (a) the policies and procedures maintained under this section; and
- (b) the training provided under section 18.

(5) A sole trader is not required to maintain policies and procedures relating to internal reporting, screening of employees and the internal communication of such policies and procedures.

(6) For the purposes of this section—

(a) “scrutiny” includes scrutinising the background and purpose of transactions and activities;

(b) “transaction” means any of the following—

(i) an occasional transaction;

(ii) a transactions within an occasional transaction; or

(iii) a transaction undertaken within a business relationship.

(6) A service provider who contravenes this section is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

### **Records required to be kept**

**17.** (1) Subject to subsection (4), a service provider must keep the records specified in subsection (2) and such additional records as may be specified in the Code

(a) in a form that enables to be made available on a timely basis, when lawfully required, to the Commission or law enforcement authorities in Anguilla; and

(b) for at least the period specified in section 18.

(2) The records specified for the purposes of subsection (1) are—

(a) a copy of the evidence of identity obtained pursuant to the application of customer due diligence measures or ongoing monitoring, or information that enables a copy of such evidence to be obtained;

(b) the supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring;

(c) a record containing details relating to each transaction carried out by the service provider in the course of any business relationship or occasional transaction;

(d) all account files; and

(e) all business correspondence relating to a business relationship or an occasional transaction.

(3) The record to which paragraph (2)(b) refers must include sufficient information to enable the reconstruction of individual transactions.

(4) A service provider who is relied on by another person in accordance with these regulations must keep the records specified in paragraph (2)(a) for the period of five years beginning on the date on which he is relied on in relation to any business relationship or occasional transaction.

(5) Where the service provider (the “first person”) is an introducer or intermediary and has given the assurance that is required under section 13(1) to another service provider (the “second person”), the first person must make available to the second person, at the second person’s request, a copy of the evidence of identification

that the first person is required to keep under this section, such evidence being the evidence that is referred to in section 13(1).

(6) Subsections (4) and (5) do not apply where a service provider applies customer due diligence measures by means of an outsourcing service provider or agent.

(6) For the purposes of this section, a person relies on another person where he does so in accordance with section 13.

(7) A service provider who contravenes this section is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

### **Period for which records must be kept**

**18.** (1) Subject to subsection (2), the period specified for the purposes of section 17 is 5 years beginning on—

(a) in the case of the records specified in section 17(2)(a), the date on which—

(i) the occasional transaction is completed; or

(ii) the business relationship ends; or

(b) in the case of the records specified in subsection 17(2)(b)—

(i) where the records relate to a particular transaction, the date on which the transaction is completed;

(ii) for all other records, the date on which the business relationship ends.

(2) The Commission or the Reporting Authority may, by written notice, specify a period long than 5 years for the purposes of section 17, and such longer period as is specified in the notice shall apply instead of the period of 5 years specified in subsection (1).

### **Training**

**19.** (1) A service provider must take appropriate measures for the purposes of making employees whose duties relate to the provision of relevant business aware of—

(a) the anti-money laundering and counter-terrorist financing policies, procedures, systems and controls maintained by the service provider in accordance with these Regulations or an applicable Code; and

(b) the law of Anguilla relating to money laundering and terrorist financing offences;

(c) these Regulations, applicable Codes and any Guidance issued by the Commission or a supervisory authority.

(2) A service provider must provide employees specified in subsection (1) with training in the recognition and handling of—

(a) transactions carried out by or on behalf of any person who is or appears to be engaged in money laundering or terrorist financing; and

(b) other conduct that indicates that a person is or appears to be engaged in money laundering or terrorist financing.

(3) For the purposes of subsection (2), training shall include the provision of information on current money laundering techniques, methods, trends and typologies.

(4) A service provider who contravenes this section is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

#### PART 4

### COMPLIANCE AND DISCLOSURES

#### **Money laundering compliance officer**

**20.** (1) Subject to subsection (8), a service provider, other than a sole trader, must appoint an individual approved by the relevant supervisory authority as its money laundering compliance officer in respect of the relevant business being carried on by the service provider.

(2) A sole trader is the money laundering compliance officer in respect of his or her relevant business.

(3) A service provider must ensure that—

(a) the individual appointed as money laundering compliance officer under this section is of an appropriate level of seniority; and

(b) the compliance officer 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.

(4) The principle function of the money laundering compliance officer is to oversee and monitor the service provider's compliance with the Act, all legislation for the time being in force concerning terrorist financing, these Regulations and the AML/CFT Code.

(5) When an individual has ceased to be the money laundering compliance officer of a service provider, the service provider must forthwith appoint another individual approved by the relevant supervisory authority as its money laundering compliance officer.

(6) A service provider must give the Commission written notice within 7 days after the date—

(a) of the appointment of a money laundering compliance officer; or

(b) that an individual ceases, for whatever reason, to be its money laundering compliance officer.

(7) The money laundering compliance officer of a service provider may also be appointed to be its money laundering reporting officer.

(8) The AML/CFT Code may modify the requirements of this section in relation to particular types or category of service provider.

(9) A service provider who contravenes this section is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

#### **Money laundering reporting officer**

**21.** (1) Subject to subsection (6), a service provider, other than a sole trader, must appoint an individual as its money laundering reporting officer to—

- (a) receive and consider internal money laundering and terrorist financing disclosures;
  - (b) considering whether a suspicious activity report should be made to the Reporting Authority; and
  - (c) where he considers a suspicious activity report should be made, submitting the report.
- (2) A service provider must ensure that—
- (a) the individual appointed as money laundering reporting officer under this section is of an appropriate level of seniority; and
  - (b) the money laundering reporting officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions.
- (3) When an individual has ceased to be the money laundering reporting officer of a service provider, the service provider must forthwith appoint another individual approved by the relevant supervisory authority as its money laundering reporting officer.
- (4) A service provider must give the Commission written notice within 7 days after the date—
- (a) of the appointment of a money laundering reporting officer; or
  - (b) that an individual ceases, for whatever reason, to be its money laundering reporting officer.
- (5) The money laundering reporting officer of a service provider may also be appointed to be its money laundering compliance officer.
- (6) The AML/CFT Code may modify the requirements of this section in relation to particular types or category of service provider.
- (7) A service provider who contravenes this section is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

## Part 5

### MISCELLANEOUS

#### **Directions where FATF applies counter-measures**

- 22.** The relevant supervisory authority may direct a service provider—
- (a) not to enter into a business relationship,
  - (b) not to carry out an occasional transaction,
  - (c) not to proceed any further with a business relationship or occasional transaction,
  - (d) to impose any prohibition, restriction or limitation relating to a business relationship or occasional transaction, or
  - (e) to apply enhanced customer due diligence measures to any business relationship or occasional transaction,

with any person who is situated or incorporated in a country to which the FATF has decided to apply counter-measures.

**Designated supervisory authority**

**23.** The Commission is designated as the sole supervisory authority for the purposes of section 160(a)(ii) of the Act.

**Transitional provisions**

- 24.** (1) For the purpose of this section, a person is a specified service provider if—
- (a) the person is, on the commencement of these Regulations, a service provider within the meaning of section 1(1);
  - (b) the person was not, immediately before the commencement of these Regulations, a regulated person within the meaning of the Anti-Money Laundering Regulations M100-2.
- (2) These Regulations apply to specified service providers as follows—
- (a) section 15(2) and 15(3) apply on the date that the Regulations come into force;
  - (b) sections 1 to 9, 10(1), 10(2), 10(3), 10(5), 10(6), 10(7), 11, 13 and 14 apply with effect from 1 August 2009;
  - (c) the remaining provisions of these Regulations apply with effect from 1 November 2009.

**Revocation**

**25.** The Anti-Money Laundering Regulations M 100-2 are revoked.

**Citation**

**26.** These Regulations may be cited as the Anti-Money Laundering and Terrorist Financing Regulations, 2009.

Made by the Governor, after consultation with Executive Council, this        day of July, 2009

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Stanley E. Reid  
ACTING GOVERNOR OF ANGUILLA

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**SCHEDULE 1**

(Section 2)

**REGULATORY LICENCES**

The following are specified as “regulatory licenses” for the purposes of this Act—

- (a) a licence issued under the Banking Act c. B 11;
  - (b) an offshore banking licence or a trust company licence issued under the Trust Companies and Offshore Banking Act c. T 60;
  - (c) a licence issued under the Company Management Act c. 75;
  - (d) a Class A or Class B insurer’s licence issued under the Insurance Act c. I 16, including a licence issued to an approved external insurer, where the licence authorises the holder to carry on long-term insurance business;
  - (e) the following licences issued under the Insurance Act c. I 16:
    - (i) an insurance agent’s licence;
    - (ii) an insurance broker’s licence;
    - (iii) an insurance sub-agent’s licence;
    - (iv) a principal representative (insurance)’s licence;
  - (f) an insurance manager’s licence issued under the Insurance Act c. I 16;
  - (g) a licence to act as the manager or administrator of a mutual fund issued under the Mutual Funds Act c. M 107; and
  - (h) a licence issued under Part 4 or Part 9 of the Securities Act c. S13.
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**SCHEDULE 2**

(Section 2)

**SERVICE PROVIDERS**

1. The following are “service providers” when acting in the course of a business carried on in, or from within, Anguilla—

- (a) subject to paragraph 4, a person that carries on any kind of regulated business;
- (b) a person who, by way of business, provides any of the following services to third parties, when providing such services—
  - (i) acting as a secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or arranging for another person to act in one of the foregoing capacities or as the director of a company;
  - (ii) providing a business, accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
  - (iii) acting as, or arranging for another person to act as, a nominee shareholder for another person;
  - (iv) arranging for another person to act as a nominee shareholder for another person;
- (c) a person who conducts as a business one or more of the following activities for, or on behalf of, a customer—
  - (i) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions, including forfeiting;
  - (ii) financial leasing;
  - (iii) issuing and managing means of payment, including credit and debit cards, cheques, travellers’ cheques, money orders and bankers’ drafts and electronic money;
  - (iv) financial guarantees or commitments;
  - (v) participation in securities issues and the provision of financial services related to such issues;
  - (vi) providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
  - (vii) safekeeping and administration of cash;
  - (viii) investing administering or managing funds or money;
  - (ix) money broking;
- (d) a person who, as a business, trades for his own account or for the account of customers in—

- (i) money market instruments, including cheques, bills, certificates of deposit and derivatives;
  - (ii) foreign exchange;
  - (iii) exchange, interest rate and index instruments;
  - (iv) financial futures and options;
  - (v) commodities futures; or
  - (vi) shares and other transferable securities;
- (e) a person who, by way of business—
- (i) provides accountancy or audit services;
  - (ii) acts as a real estate agent, when the person is involved in a transaction concerning the buying and selling of real estate;
- (f) an independent legal professional;
- (g) a high value dealer.
2. The following are “service providers”, when acting in the course of a business, whether carried on in, from within or outside Anguilla—
- (a) a mutual fund registered or recognised, or required to be registered or recognised, under the Mutual Funds Act c. M 107 when marketing or otherwise offering its shares;
  - (b) a person who, although not licensed under the Mutual Funds Act c. M 107, acts as the administrator or manager or manager of a public fund registered, or required to be registered, or a private or professional fund recognised, or required to be recognised, under the Mutual Funds Act c. M 107.
3. A person that carries on insurance business is a service provider only where it carries on—
- (a) long-term business; or
  - (b) any form of life insurance business or investment related insurance business that may be classified as general business.
4. A person who carries on business as—
- (a) an insurance agent;
  - (b) an insurance broker;
  - (c) an insurance sub-agent;
  - (d) a principal representative (insurance);
- is a service provider only where the person acts with respect to any type of business referred to in paragraph (a) or (b).
5. Terms defined in the Insurance Act c. I 16 have the same meaning when used in paragraphs 4 and 5.
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