



ANGUILLA

REVISED REGULATIONS OF ANGUILLA

under

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

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

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Revised Regulations of Anguilla: P98-1

PROCEEDS OF CRIME ACT (R.S.A. c. P98)

ANTI-MONEY LAUNDERING AND TERRORIST FINANCING REGULATIONS

NOTE: These Regulations are enabled under section 162 of the Proceeds of Crime Act, R.S.A. c. P98.

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PART 1

PRELIMINARY PROVISIONS

Interpretation

1. (1) In these Regulations—

“AML/CFT obligation”, in relation to a service provider, means an obligation of the service provider under the Act or any other law relating to money laundering or terrorist financing, these Regulations, the Externally Regulated and Non-Regulated Service Providers Regulations or any Code issued under the Act, and includes—

- (a) in the case of any service provider, an obligation to provide information imposed on the service provider in a notice given to it by the Unit under section 20 of the Financial Intelligence Unit Act; and

(R.A. 111/2022, s. 2(a))

- (b) in the case of an externally regulated or a non-regulated service provider, an obligation imposed by a directive given under Schedule 4 of the Act;

“Anti-terrorist Financing Order” means the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, or such Order or other law as may replace that Order;

“applicable Code”, in relation to a service provider, means a Code that applies to the service provider;

(R.A. 36/2013, s. 2)(a)(i)

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

(R.A. 36/2013, s. 2(a)(ii))

“beneficial owner” has the meaning specified in sections 9 to 12 of the Commercial Registry and Beneficial Ownership Registration System Act;

(R.A. 111/2022, s. 2(b))

“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 an Anti-Money Laundering and Prevention of Terrorist Financing Code issued by the Commissioner under section 163 of the Act;

(R.A.s 27/2009, s. 1(a) and 36/2013, s. 2(a)(iii))

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

(R.A.s 27/2009, s. 1(c) and 36/2013, s. 2(a)(iv))

“customer due diligence information”, in relation to a service provider, has the meaning specified in the applicable Code;

(R.A. 36/2013, s. 2(a)(i))

“customer due diligence measures” has the meaning specified in section 3;

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

“domestic politically exposed person” has the meaning specified in section 5(3);

“externally regulated service provider” has the meaning specified in Schedule 3;
(R.A. 36/2013, s. 2(a)(i))

“FATF” means the international body known as the Financial Action Task Force on or such other international body as may succeed it;

(R.A. 36/2013, s. 2(a)(v))

“FATF Recommendations” means the FATF Recommendations issued by the FATF in February 2012, together with the Interpretive Notes, Glossary and Methodology, incorporating such amendments as may from time-to-time be made to the Recommendations, or such document or documents issued by the FATF as may supersede those Recommendations;

(R.A. 111/2022, s. 2 (c))

“financial business” means an individual or legal person who falls within section 1(a), (b), (c) or (d) or section 2 of Schedule 2;

(R.A. 111/2022, s. 2 (e))

“foreign listed company” has the meaning specified in section 1 of the Commercial Registry and Beneficial Ownership Registration System Act;

(R.A. 111/2022, s. 2 (e))

“foreign politically exposed person” has the meaning specified in section 5(2);

(R.A. 36/2013, s. 2(a)(i))

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

(R.A. 27/2009, s. 1(e))

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

(R.A. 36/2013, s. 2(a) (vii))

“high value dealer” means a person who, by way of business, trades in goods, including precious metals and precious stones, and 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;

“identification information”, in relation to a service provider, has the meaning specified in the applicable Code;
(R.A. 36/2013, s. 2(a)(i))

“independent legal professional” means a firm or sole practitioner who, by way of business, provides legal or notarial services to other persons, when preparing for or carrying out transactions for a customer in relation to—

- (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 or the Company Management Act;

(R.A. 27/2009, s. 1(f))

“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 service provider;

(R.A. 27/2009, s. 1(g))

“licensed lottery” means a lottery licensed by the Government to operate in Anguilla;

(R.A. 43/2014, s. 2)

“listed company” has the meaning specified in section 1 of the Commercial Registry and Beneficial Ownership Registration System Act;

(R.A. 111/2022, s. 2(e))

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

(R.A. 27/2009, s. 1(h))

“money laundering disclosure” means a disclosure under section 122, 123 or 124 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 23;

“occasional transaction” has the meaning specified in section 2;

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

“politically exposed person” has the meaning specified in section 5(1);

(R.A. 36/2013, s. 2(a)(viii))

“recognised exchange” has the meaning specified in section 1 of the Commercial Registry and Beneficial Ownership Registration System Act;

(R.A. 111/2022, s. 2(d))

“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 business which, if carried on by a person, would result in that person being a service provider;

(R.A.s 27/2009, s. 1(j) and 36/2013, s. 2(a)(x))

“service provider” has the meaning specified in Schedule 2;

(R.A. 36/2013, s. 2(a)(xi))

“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;

“terrorism” has the meaning specified in sections 2(4) to (7) of the UK Terrorist Asset-Freezing Act;

“terrorist financing” means—

- (a) Conduct referred to in—
 - (i) Sections 11, 12, 13, 14, 15 and 18 of the UK Terrorist Asset-Freezing Act;
 - (ii) Sections 14, 15, 16, 17 and 18 of the Al-Qaida (United Nations Measures) (Overseas Territories) Order, 2012;
 - (iii) Sections 6 to 9 of the Anti-terrorist Financing Order;
 - (iv) Sections 14, 15, 16, 17 and 18 of the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012; or
- (b) Wilfully providing or collecting funds by any means, directly or indirectly, with the knowledge or intention that they are to be used or should be used in full or in part to facilitate the commission of terrorist acts, or to persons or entities acting on behalf of, or at the direction of a person who finances terrorism;

“terrorist financing laws” means—

- (a) the Anti-terrorist Financing Order;
- (b) the Al-Qaida (United Nations Measures) (Overseas Territories) Order, 2012;
- (c) the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012;
- (d) the UK Terrorist Asset-Freezing Act; or
- (e) any law that may replace a law specified in paragraphs (a) to (d).

(R.A. 36/2013, s. 2(a)(i))

“terrorist financing disclosure” means a disclosure under—

- (a) section 19 of the UK Terrorist Asset-Freezing Act;
- (b) section 22 of the Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012;
- (c) section 10 or Part 1 of Schedule 1 of the Anti-terrorist Financing Order; or

(d) section 22 of the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012;
(R.A. 36/2013, s. 2(a)(xii))

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

“UK Terrorist Asset-Freezing Act” means the provisions of the Terrorist Asset-Freezing etc. Act 2010 of the United Kingdom as extended to Anguilla by the Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011, as modified by that Order.

(R.A. 36/2013, s. 2(a)(i))

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

(R.A. 27/2009, s. 1(2) and 36/2013, s. 2(b))

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

(4) An exchange is not a recognised exchange if—

- (a) it is situated in a country specified by the Commission by notice published in such manner as it considers appropriate, as a country that does not implement, or does not effectively apply, the FATF Recommendations; or
- (b) being a member of the World Federation of Exchanges, the Commission publishes a notice in such manner as it considers appropriate, specifying that it is not a recognised exchange.

(R.A. 36/2013, s. 2(c))

Meaning of “occasional transaction”

2. (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) the sum of \$2,500, in the case of a transaction, or linked transaction—
 - (i) carried out in the course of a money services business; or
 - (ii) that, although not falling within subparagraph (i), is a transfer of funds within the meaning of section 44 of the Code; or
- (b) the sum of \$37,500, in the case of any other transaction, or linked transaction.

(R.A. 111/2022, s. 4(a) and (b))

Meaning of “customer due diligence measures”

3. (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 each beneficial owner of the customer and third party, where either the customer or third party, or both, are not individuals;
(R.A. 36/2013, s. 3)
- (e) taking reasonable measures 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;
(R.A. 111/2022, s. 5(a)(i))
- (f) taking the measures necessary to understand and, as appropriate, obtaining information on the purpose and intended nature of the business relationship or occasional transaction;
(R.A. 111/2022, s. 5(a)(ii))
- (g) where the customer is a legal person, partnership, foundation, trust or similar legal arrangement, taking the measures necessary to understand—
 - (i) the nature of the customer’s business, and
 - (ii) the ownership and control structure of the customer; and
(R.A. 111/2022, s. 5(a)(iii))
- (h) where the beneficial owner of a customer or third party is a legal person, partnership, foundation, trust or similar legal arrangement, taking the measures necessary to understand the ownership and control structure of the beneficial owner.
(R.A. 111/2022, s. 5(a)(iii))

(2) If the customer or third party is a legal person and subsection (3) applies, the service provider shall identify and take reasonable measures to verify the identity of the individual who holds the position of senior managing official in relation to the customer or third party.
(R.A. 111/2022, s. 5(b))

(3) Subsection (2) applies if the service provider has exhausted all possible means of identifying the beneficial owner of the customer or third party and—

- (a) has not succeeded in doing so; or
- (b) is not satisfied that the individual identified is the beneficial owner.
(R.A. 111/2022, s. 5(b))

(4) Customer due diligence measures include—

- (a) 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
(R.A. 111/2022, s. 5(c))

(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.

(5) 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.

(6) Subsections (1)(d), (e) and (h) do not apply if the customer or third party is a listed company or a foreign listed company.

(R.A. 111/2022, s. 5(d))

(7) If a service provider suspects that a transaction has been structured so as to enable the benefit to be retained by an individual who does not fall within the definition of beneficial owner, that individual shall be treated as a beneficial owner for the purposes of the Regulations and the Code.

(R.A. 111/2022, s. 5(e))

Meaning of “ongoing monitoring”

4. “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”, “foreign politically exposed person”, “domestic politically exposed person” and associated terms

5. (1) “Politically exposed person” means—

- (a) a foreign politically exposed person;
- (b) a domestic politically exposed person; or
- (c) a person who is, or has been, entrusted with a prominent function by an international organisation.

(2) “Foreign politically exposed person” means a person who is, or has been, entrusted with a prominent public function by a country other than Anguilla.

(3) “Domestic politically exposed person” means a person who is, or has been, entrusted with a prominent public function by Anguilla.

(4) Without limiting subsections (2) or (3), the following have or exercise prominent public functions in relation to a country—

- (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.

(5) “International organisation” means an entity—

- (a) established by formal political agreement between its member countries that has the status of an international treaty;
- (b) whose existence is recognised by law in its member countries; and
- (c) not treated as a resident institutional unit of the country in which it is located.

(6) For the purposes of paragraph (1)(c), the following have or exercise prominent functions in relation to an international organisation—

- (a) the directors and deputy directors of the international organisation;
- (b) the members of the board or governing body of the international organisation; and
- (c) other members of the senior management of the international organisation.

(7) The following are immediate family members of a politically exposed person—

- (a) a spouse;
- (b) a partner;
- (c) children and their spouses or partners;
- (d) parents;
- (e) grandparents and grandchildren; and
- (f) siblings.

(8) For the purposes of paragraphs (7)(b) and (c), “partner” means—

- (a) a person who lives in a domestic relationship which is similar to the relationship between husband and wife; or
- (b) a person in a relationship with another person who is considered by the law of any jurisdiction which applies to the relationship as equivalent to a spouse.

(9) The following are close associates of a politically exposed person—

- (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.

(10) For the purposes of deciding whether a person is a close associate of a politically exposed person, a service provider need only have regard to information which is in that person's possession or is publicly known.
(R.A. 36/2013, s. 4)

Meaning of “correspondent banking relationship” and “shell bank”

6. (1) “Correspondent banking relationship” means a relationship that involves the provision of banking services by one bank, (the “correspondent bank”) to another bank (the “respondent bank”).
(R.A. 36/2013, s. 5)

(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 an affiliate of a corporate body that—
 - (i) has a physical presence in a country that involves meaningful decision-making and management,
 - (ii) is authorised to carry on banking business in that country, and
 - (iii) is subject to effective consolidated supervision in relation to its banking business, which extends to its affiliates.

(R.A. 36/2013, s. 5)

Meaning of “foreign regulated person”

7. “Foreign regulated person” means a person—

- (a) that is incorporated in, or if it is not a company, has its principal place of business in, a country outside Anguilla (its “home country”);
- (b) that carries on business outside Anguilla that, if carried on in Anguilla, would be a regulated business or would result in the person falling within the definition of “independent legal professional”;

- (c) that, in respect of the business referred to in paragraph (b)—
 - (i) is subject to legal requirements in its home country for the prevention of money laundering and terrorist financing that are consistent with the requirements of the FATF Recommendations for that business; and
 - (ii) is subject to effective supervision for compliance with those legal requirements by a foreign regulatory authority.

(R.A.s 27/2009, s. 5 and 36/2013, s. 6)

Scope of Regulations

8. These Regulations apply to all service providers.

(R.A. 36/2013, s. 7)

Application of Regulations and Codes outside Anguilla

9. (1) Subject to subsections (2), (3) and (4), an Anguilla 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 applicable Codes in respect of any business carried on through the branch; and

(R.A. 36/2013, s. 8)

- (b) ensure that these Regulations and the applicable Codes are complied with by the subsidiary with respect to any business that it carries on.

(R.A. 36/2013, s. 8 and R.A. 111/2022, s. 6(a))

(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 located is a country—

- (a) which does not apply, or insufficiently applies the FATF Recommendations; or

- (b) against which the FATF calls for countermeasures.

(R.A. 111/2022, s. 6(c))

(3) If the foreign country in which a branch or subsidiary of an Anguilla 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 applicable Codes, the Anguilla financial business shall ensure that the more stringent requirements are complied with by its branch or subsidiary.

(R.A. 36/2013, s. 8 and R.A. 111/2022, s. 6(a) and (b))

(4) Where the laws of a foreign country do not permit a branch or subsidiary of an Anguilla financial business to comply with subsection (1), the Anguilla 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 Recommendations and to deal effectively with the risk of money laundering and terrorist financing.

(R.A. 36/2013, s. 8 and R.A. 111/2022, s. 6(a) and (b))

(5) For the purposes of this section, an Anguilla financial business is a financial business that is—

- (a) a company incorporated in Anguilla;
- (b) a partnership based in Anguilla;
- (c) an individual resident in Anguilla; or
- (d) any other person having its principal or head office in Anguilla.

(R.A. 111/2022, s. 6(d))

PART 2

CUSTOMER DUE DILIGENCE

Application of customer due diligence measures and ongoing monitoring and risk assessment

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; and

(R.A. 27/2009, s. 6)

- (c) to existing customers—
 - (i) if the service provider becomes aware that any circumstances of the customer that are material to its risk assessment for that customer have changed, and
 - (ii) at other appropriate times as determined on a risk-based approach.

(R.A. 111/2022, s. 7(a))

(2) For the purposes of subsection (1)(c), in determining when it is appropriate to apply customer due diligence measures to existing customers, a service provider must take into account, among other things—

- (a) any indication that the identity of the customer, or of the beneficial owner of the customer, has changed;
- (b) any transactions which are not reasonably consistent with the service provider's knowledge of the customer;
- (c) any change in the purpose or intended nature of the service provider's relationship with the customer;

(d) any other matter which might affect the service provider's assessment of the money laundering or terrorist financing risk with respect to the customer.

(R.A. 111/2022, s. 7(b))

(3) Without limiting subsection (1)(b)(ii) or (c), 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; or

(R.A. 27/2009, s. 6)

(c) when there is a change in the third parties, or the beneficial ownership of third parties.

(R.A. 36/2013, s. 9)

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

(5) 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 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).

(R.A. 36/2013, s. 9)

(6) 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 a low risk of money laundering and terrorist financing;

(c) the risk of money laundering and terrorist financing can and will be effectively managed; and

(R.A. 111/2022, s. 7(c))

(d) verification of identity is completed as soon as reasonably practicable after contact with the customer is first established.

(R.A. 27/2009, s. 6)

(7) 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.

(8) A service provider must not permit a customer to utilise a business relationship prior to verification unless the customer has adopted risk management procedures concerning the conditions under which the business relationship may be used.

(9) A service provider is not required to continue to apply due diligence measures under this section if—

(a) the service provider has applied due diligence measures with respect to a customer, third party or beneficial owner;

(b) the service provider makes a money laundering disclosure or a terrorist financing disclosure; and

(c) continuing to apply customer due diligence measures in relation to that customer, third party or beneficial owner would result in the commission of an offence by the service provider under—

(i) section 126 of the Proceeds of Crime Act,

(ii) any counter terrorism laws,

(iii) any proliferation financing laws of Anguilla, or

(iv) any Orders in Council issued by the United Kingdom.

(R.A. 111/2022, s. 7(d))

(10) 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 transaction 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.

(R.A. 36/2013, s. 10)

(2) If section 10(6) or (7) 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.

(R.A. 27/2009, s. 7)

(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 Unit; or

(R.A. 111/2022, s. 8)

- (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 shall, 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—

(i) that does not apply, or insufficiently applies the FATF Recommendations, or

(ii) against which the FATF calls for countermeasures;

(R.A. 36/2013, s. 11 and R.A. 111/2022, s. 9(a))

- (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 foreign politically exposed person or a family member or close associate of a foreign politically exposed person;

(R.A. 36/2013, s. 11 and R.A. 111/2022, s. 9(b))

- (e) where any of the following is a foreign politically exposed person or a family member or close associate of a foreign 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 for whom a customer is acting,

(iv) a person acting, or purporting to act, on behalf of the customer;

(R.A. 36/2013, s. 11 and R.A. 111/2022, s. 9(b))

- (f) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

(R.A. 27/2009, s. 8)

(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.

Additional customer due diligence measures and ongoing monitoring, and investment related insurance policies

13. (1) As soon as a beneficiary of a life insurance or other investment related insurance policy has been identified or designated, a service provider shall—

- (a) if the beneficiary is a named person or legal arrangement, take the full name of the person or arrangement;
- (b) if the beneficiary is designated by specified characteristics, as a class or in any other way, obtain sufficient information about the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary before any payment is made under the insurance policy.

(2) A service provider must verify the identity of a beneficiary referred to in subsection (1) before any payment is made under the insurance policy.

(3) Where a service provider provides a life insurance policy, the service provider must consider the nature and identity of the beneficiary of the policy when assessing—

- (a) whether there is a higher risk of money laundering or terrorist financing;
- (b) whether it should apply enhanced customer due diligence measures and enhanced ongoing monitoring; and
- (c) if the service provider assesses that there is a higher risk of money laundering or terrorist financing, the extent of the measures which should be taken to manage and mitigate that risk.

(4) Where the beneficiary of a life insurance policy—

- (a) is a legal person or a legal arrangement; and
- (b) the service provider assesses that the beneficiary presents a higher risk of money laundering or terrorist financing;

the service provider must take reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary before any payment is made under the policy.

(5) In relation to a life insurance policy or other investment related insurance policy, a service provider shall take reasonable measures to determine whether—

- (a) any beneficiary of the insurance policy; or
- (b) a beneficial owner of a beneficiary of the insurance policy;

is a politically exposed person or a family member or close associate of a politically exposed person.

(6) The measures required by subsection (5) must be taken before a payout is made under the policy.

(7) A service provider must, in addition to the measures required by section 12—

- (a) ensure that—
 - (i) its board or senior management are informed before payment is made of any sums under an insurance policy, where the beneficiary of such policy is a politically exposed person or a family member or close associate of a politically exposed person, and
 - (ii) its entire business relationship with the holder of the insurance policy is subject to enhanced scrutiny on an ongoing basis; and
- (b) consider making a suspicious activity report.

(R.A. 111/2022, s. 10)

Reliance on introducers and intermediaries

14. (1) Subject to subsections (3) and (4) and any requirements in an applicable 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.

(R.A. 36/2013, s. 12)

(2) 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 the intermediary or introducer—

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

(R.A. 27/2009, s. 9(a))

(3) A service provider—

- (a) before relying on an introducer or intermediary, shall consider the level of country risk for the country in which the introducer or intermediary is established; and
- (b) shall not rely on an introducer or intermediary if the introducer or intermediary is established in a country—
 - (i) that is subject to any warnings issued by the Unit or the Commission that indicates the country presents a high risk of money laundering or terrorist financing, or

(ii) that the service provider, whether as a result of its own risk assessment carried out under section 3 of the Code or otherwise, has reason to believe presents a high risk of money laundering or terrorist financing.

(R.A. 111/2022, s. 11(c))

(4) Where a service provider relies on an introducer or an intermediary to apply customer due diligence measures in respect of a customer, third party or beneficial owner, the service provider shall immediately obtain from the introducer or intermediary, the customer due diligence information required to comply with the requirements of these Regulations and the Code concerning the customer, third party or beneficial owner.

(R.A. 36/2013, s. 12 and R.A. 111/2022, s. 11(b))

(5) 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.

(6) 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 service provider remains liable for any failure to apply such measures.

(R.A. 27/2009, s. 9(b))

Simplified due diligence

15. (1) A service provider may apply simplified customer due diligence measures in relation to a particular business relationship or transaction if it determines that the business relationship or transaction presents a low degree of risk of money laundering and terrorist financing, having taken into account—

- (a) the risk assessment carried out by the service provider under section 3 of the Code;
- (b) any relevant warnings, information, advice or guidance issued by the Unit or the Commission concerning the risks of money laundering and terrorist financing affecting Anguilla or any part of the financial services sector in Anguilla; and
- (c) the matters specified in subsection (2).

(2) In assessing whether a particular relationship or transaction presents a low risk of money laundering and terrorist financing and the extent to which it is appropriate to apply simplified due diligence measures, a service provider must—

- (a) take account of all relevant risks, including—
 - (i) customer risk,
 - (ii) product and transaction risk,
 - (iii) delivery risk, and
 - (iv) country risk; and

- (b) comply with the requirements of the Code.

(3) A service provider that applies simplified due diligence procedures must—

- (a) continue to comply with the requirements of section 10, but may adjust the extent, timing or type of the measures it undertakes to the extent justified by its determination under subsection (1); and

(b) carry out sufficient monitoring of any business relationships or transactions to which it has applied simplified due diligence measures to enable it to detect any unusual or suspicious transactions.

(4) A service provider must not apply simplified due diligence measures with respect to—

- any third party for whom the customer may be acting; or
- the beneficial owners of such a third party.

(5) A service provider must not continue to apply simplified due diligence measures if—

- it doubts the adequacy, veracity or accuracy of any documents, data or information previously obtained under its customer due diligence measures or when conducting ongoing monitoring;
- its risk assessment changes and it considers that there is no longer a low risk of money laundering and terrorist financing;
- it suspects money laundering or terrorist financing; or
- any of the matters set out in section 12(2)(b) to (f) apply.

(R.A. 111/2022, s. 12)

Shell banks and anonymous accounts

16. (1) A financial institution—

- shall not enter into or continue a correspondent banking relationship with a shell bank; and
- shall take appropriate enhanced measures to satisfy itself that it is not entering into, or continuing, a correspondent relationship with a credit institution or financial institution which allows its accounts to be used by a shell bank.

(R.A. 36/2013, s. 14(a) and R.A. 111/2022, s. 13)

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

(R.A. 36/2013, s. 14(b))

(3) An Anguilla 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.

(R.A. 36/2013, s. 14(c))

PART 3

POLICIES, PROCEDURES, SYSTEMS AND
CONTROLS, RECORD KEEPING AND TRAINING**Policies, procedures, systems and controls to prevent and detect money laundering and terrorist financing**

17. (1) Subject to subsection (5), a service provider shall 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; and
- (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).

(R.A. 27/2009, s. 11(a))

(2) The policies, systems and controls referred to in subsection (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; and

(R.A. 36/2013, s. 16(b))

- (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 or a family member or close associate of 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 or against which the FATF calls for countermeasures, or

(R.A. 36/2013, s. 16(b) and R.A. 111/2022, s. 14)

- (iii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country 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.

(R.A. 27/2009, s. 11(b))

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

(R.A. 27/2009, s. 11(c))

(4) A service provider shall 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 21.

(R.A. 27/2009, s. 11(d))

(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 transaction within an occasional transaction, or
 - (iii) a transaction undertaken within a business relationship.

(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.

(R.A. 27/2009, s. 11)

Group-level money laundering policies, procedures, systems and controls

18. (1) A service provider that is a holding entity shall—

- (a) ensure that the policies, procedures, systems and controls required under subsection (2) and section 17, and section 5 of the Code apply—
 - (i) to all its subsidiary entities, whether located in or outside Anguilla, and
 - (ii) to any branches that it has established in or outside Anguilla,

which carry on any activity in respect of which the service provider is subject to these Regulations;

- (b) establish and maintain the policies, procedures, systems and controls referred to in subsection (1) throughout its group;

- (c) regularly review and update the policies, procedures, systems and controls applied and established under paragraphs (a) and (b);
- (d) maintain a record in writing of—
 - (i) the policies, procedures, systems and controls established under paragraphs (a) and (b),
 - (ii) any changes to those policies, procedures, systems and controls made as a result of the review and update required by paragraph (c), and
 - (iii) the steps taken to communicate those policies, procedures, systems and controls, or any changes to them, to subsidiary entities and branches within the group.

(2) Without limiting subsection (1)(a), the policies, procedures, systems and controls must cover—

- (a) the sharing of information required for the purposes of customer due diligence, ongoing monitoring and risk management;
- (b) group-level compliance, audit, and anti-money laundering and anti-terrorist financing functions, of customer, account, and transaction information from branches and subsidiaries when necessary for anti-money laundering and anti-terrorist financing purposes; and
- (c) adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

(3) For the purposes of this section—

- (a) where the legal entity is a company, “holding entity” has the same meaning as a “holding company” under the Business Companies Act;
- (b) where the legal entity is a company, “subsidiary entity” has the same meaning as “subsidiary” under the Business Companies Act; and
- (c) “group” means the holding entity and all branches and majority-owned subsidiary entities of the holding entity.

(R.A. 111/2022, s. 15)

Records required to be kept

19. (1) Subject to subsection (4), a service provider shall keep the records specified in subsection (2) and such additional records as may be specified in an applicable Code—

- (a) in a form that enables them 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 20.

(R.A. 27/2009, s. 12(a) and R.A. 36/2013, s. 17(a))

(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;
- (e) all business correspondence relating to a business relationship or an occasional transaction; and
- (f) the results of any analysis undertaken—
 - (i) arising from the application of customer due diligence measures,
 - (ii) of transactions undertaken, or
 - (iii) concerning any other matter relevant to the service provider's obligations under these Regulations or the Code.

(R.A. 11/2022, s. 16)

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

(R.A. 27/2009, s. 12(b))

(4) A service provider who is relied on by another service provider in accordance with these regulations shall keep the records specified in paragraph (2)(a) for the period of 5 years beginning on the date on which he is relied on in relation to any business relationship or occasional transaction.

(R.A.s 27/2009, s. 12(c) and 36/2013, s. 17(b))

(5) Where a service provider (the “first service provider”) is an introducer or intermediary and has given the assurance that is required under section 14(2) 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 14(2).

(R.A. 27/2009, s. 12(d))

(6) Subsection (5) does not apply where a service provider applies customer due diligence measures by means of an outsourcing service provider or agent.

(R.A. 27/2009, s. 12(e))

(7) For the purposes of this section, a service provider relies on another service provider where he does so in accordance with section 14.

(R.A.s 27/2009, s. 12(f) and 36/2013, s. 17(c))

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

(R.A. 27/2009, s. 12(f))

Period for which records must be kept

20. (1) Subject to subsection (2), the period specified for the purposes of section 19 is 5 years beginning on—

- (a) in the case of the records specified in section 19(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 section 19(2)(b), (c), (d), (e) and (f)—
 - (i) where the records relate to a particular transaction, the date on which the transaction is completed, or
 - (ii) for all other records, the date on which the business relationship ends.

(R.A. 27/2009, s. 13 and R.A. 111/2022, s. 17(a))

(2) The Commission or the Unit may, by written notice, specify a period longer than 5 years for the purposes of section 19, and such longer period as is specified in the notice shall apply instead of the period of 5 years specified in subsection (1).

(R.A. 111/2022, s. 17(b))

Training

21. (1) A service provider shall 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 and the Code; (R.A. 36/2013, s. 18)
- (b) the law of Anguilla relating to money laundering and terrorist financing offences; and
- (c) these Regulations, applicable Codes and any Guidance issued by the Commission. (R.A. 27/2009, s. 14(b))

(2) A service provider shall 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.

(R.A. 27/2009, s. 14)

(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

22. (1) Subject to subsection (12), a service provider, other than a sole trader, shall appoint an individual approved by the supervisory authority as its money laundering compliance officer in respect of the relevant business being carried on by the service provider.

(*R.A.s 27/2009, s. 15(a) and 36/2013, s. 19(a)*)

(2) An application for the approval of an individual under subsection (1) shall be made to the supervisory authority—

- (a) in such form and containing such information as may be specified in a form approved by the supervisory authority for the purpose; and
- (b) shall be accompanied by an application fee of \$100.

(*R.A. 111/2022, s. 18*)

(3) The supervisory authority may require the service provider to provide it with any information or documents that the supervisory authority reasonably requires to consider the application.

(*R.A. 111/2022, s. 18*)

(4) If it is satisfied that the individual is fit and proper to be appointed as the money laundering compliance officer of the service provider, the supervisory authority may approve the appointment.

(*R.A. 111/2022, s. 18*)

(5) If the supervisory authority approves the appointment, the service provider shall pay the Commission an approval fee of \$100 before appointing the individual as money laundering compliance officer.

(*R.A. 111/2022, s. 18*)

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

(7) A service provider shall ensure that—

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

(*R.A. 36/2013, s. 19(b)*)

(8) The principal function of the money laundering compliance officer is to oversee and monitor the service provider's compliance with the Act, all laws for the time being in force concerning terrorist financing, these Regulations and the applicable Codes.

(*R.A. 36/2013, s. 19(c)*)

(9) When an individual has ceased to be the money laundering compliance officer of a service provider, the service provider shall as soon as reasonably practicable appoint another individual approved by the supervisory authority as its money laundering compliance officer.

(*R.A.s 27/2009, s. 15(c) and 36/2013, s. 19(d)*)

(10) A service provider shall give the supervisory authority 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.
(R.A.s 27/2009, s. 15(c) and (d) and 36/2013, s. 19(e))

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

(12) With the approval of the Commission, the same individual may be appointed as the compliance officer and the money laundering compliance officer of a regulated service provider or of an externally regulated service provider.

(R.A. 36/2013, s. 19(f))

(13) The Codes may modify the requirements of this section in relation to particular types or category of service provider.

(R.A. 36/2013, s. 19(g))

(14) 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

23. (1) Subject to subsection (11), a service provider, other than a sole trader, shall appoint an individual approved by the supervisory authority as its money laundering reporting officer to—

- (a) receive and consider internal money laundering and terrorist financing disclosures;
- (b) consider whether a suspicious activity report should be made to the Unit; and
- (c) where he considers a suspicious activity report should be made, submit the report.
(R.A.s 27/2009, s. 16(a) and (b) and 36/2013, s. 20(a) and R.A. 111/2022, s. 19(a))

(2) An application for the approval of an individual under subsection (1) shall be made to the supervisory authority—

- (a) in such form and containing such information as may be specified in a form approved by the supervisory authority for the purpose; and
- (b) shall be accompanied by an application fee of \$100.
(R.A. 111/2022, s. 19(b))

(3) The supervisory authority may require the service provider to provide it with any information or documents that the supervisory authority reasonably requires to consider the application.

(R.A. 111/2022, s. 19(b))

(4) If it is satisfied that the individual is fit and proper to be appointed as the money laundering reporting officer of the service provider, the supervisory authority may approve the appointment.

(R.A. 111/2022, s. 19(b))

(5) If the supervisory authority approves the appointment, the service provider shall pay the Commission an approval fee of \$100 before appointing the individual as money laundering reporting officer.

(R.A. 111/2022, s. 19(b))

(6) The duties of the money laundering reporting officer include the following—

- (a) receiving and considering internal money laundering and terrorist financing disclosures;
- (b) considering whether a suspicious activity report should be made to the Unit; and
- (c) submission of a report, where he considers a suspicious activity report should be made.

(R.A. 111/2022, s. 19(b))

(7) A service provider shall 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.

(R.A. 27/2009, s. 16(a))

(8) When an individual has ceased to be the money laundering reporting officer of a service provider, the service provider shall, as soon as reasonably practicable, appoint another individual approved by the supervisory authority as its money laundering reporting officer.

(R.A.s 27/2009, s. 16(a) and 36/2013, s. 20(b))

(9) A service provider shall give the supervisory authority 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.

(R.A.s 27/2009, s. 16(a) and (c) and 36/2013, s. 20(c))

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

(11) The Codes may modify the requirements of this section in relation to particular types or category of service provider.

(R.A. 36/2013, s. 20(d))

(12) 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

Interpretation

24. For the purposes of this Part—

“direction” means a direction given under section 25;

“exemption” means an exemption granted under section 26(3).

(R.A. 36/2013, s. 21)

Directions may be given by Commission to service providers

25. (1) The Commission may give a direction of a type specified in section 26 to a service provider , service providers of a specified type or description of service provider or all service providers, in relation to transactions or business relationships with—

- (a) the government of;
- (b) any person or persons or a subsidiary of a company—
 - (i) carrying on business in, or
 - (ii) resident, incorporated, constituted or formed in,

a country in relation to which one or more of the conditions specified in subsection (3) applies.

(R.A. 111/2022, s. 20(a) and (b))

(2) A direction under section 26 may impose requirements in relation to—

- (a) a particular person within subsection (1);
- (b) any description of persons within subsection (1); or
- (c) all persons within subsection (1).

(R.A. 111/2022, s. 20(c))

(3) The conditions referred to in subsection (1) are that—

(a) the FATF has advised that measures should be taken in relation to the country because of the risk that money laundering or terrorist financing is being carried on—

- (i) in the country,
- (ii) by the government of the country, or
- (iii) by persons resident, constituted, incorporated or formed in the country; or

(b) the Commission reasonably believes that there is a risk that money laundering or terrorist financing is being carried on—

- (i) in the country,
- (ii) by the government of the country, or
- (iii) by persons resident, constituted, incorporated or formed in the country.

(R.A. 111/2022, s. 20(d))

(4) A direction—

- (a) shall be given in the manner specified in section 27;
- (b) shall be proportionate having regard to the advice given by the FATF or, as the case may be, the risk referred to in paragraph (3)(b) or (c); and

(c) may make different provision in relation to different service providers, designated persons, circumstances or cases.

(R.A. 111/2022, s. 20(e))

(4) The Commission shall take appropriate measures to monitor the compliance of service providers with the requirements of any directions given.

(R.A. 36/2013, s. 22 and R.A. 111/2022, s. 20(f))

Types of directions that may be given

26. (1) A direction may require the service provider—

(a) to undertake enhanced customer due diligence measures—

(i) before entering into a specified transaction or business relationship, or a specified description of transactions or business relationships, with a designated person, and

(ii) during a business relationship with such a person;

(R.A. 111/2022, s. 21(a))

(b) to undertake enhanced ongoing monitoring of any business relationship with a designated person;

(c) to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons; or

(d) not to enter into or continue to participate in—

(i) a specified transaction or business relationship with a designated person, or

(ii) any transaction or business relationship with a designated person.

(2) A direction under paragraph (1)(c)—

(a) shall specify how the direction is to be complied with, including—

(i) the person to whom the information and documents are to be provided, and

(ii) the period within which, or intervals at which, information and documents are to be provided; and

(b) is not exercisable in relation to privileged material.

(3) Where a direction includes requirements of a kind specified in paragraph (1)(d), the Commission may, either in the direction or by separate notice in writing, exempt acts specified in the direction or notice from the requirements.

(4) An exemption may—

(a) be a general exemption or may apply to a particular service provider;

(R.A. 111/2022, s. 21(b))

(b) be subject to conditions;

(c) have effect for the duration of the direction or be subject to an expiry date; and

(d) be varied or revoked by the Commission at any time.

Procedures for giving directions and granting exemptions

27. (1) Where a direction is a general direction or an exemption is a general exemption, the Commission must publish the direction or exemption in such manner as it considers appropriate.

(2) A general direction is subject to annulment by resolution of the House of Assembly.

(3) Where a general direction or a general exemption is varied or ceases to have effect, whether on revocation or otherwise, the Commission must publish that fact in such manner as it considers appropriate.

(4) Where the Commission gives a direction or grants an exemption to a particular service provider, the Commission must give written notice of the direction or the exemption to that financial business.

(R.A. 111/2022, s. 22)

(5) Where a direction or exemption referred to in subsection (4) is varied or ceases to have effect, whether on revocation or otherwise, the Commission must give notice of that fact to the service provider.

(R.A. 111/2022, s. 22)

(6) A direction, whether a general direction or a direction to a particular service provider—

- (a) may be varied or revoked by the Commission at any time; and
- (b) if not previously revoked, ceases to have effect at the end of one year from the date that it was first given.

(R.A. 111/2022, s. 22)

Offences

28. (1) Subject to subsection (2), a service provider is guilty of an offence if the service provider—

- (a) fails to comply with a direction; or
- (b) for the purpose of obtaining the grant of an exemption under section 26(3)—
 - (i) provides information that is false in a material respect or a document that is not what it purports to be, and
 - (ii) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.

(R.A. 111/2022, s. 23)

(2) A service provider does not commit an offence under paragraph (1)(a) if the service provider took all reasonable steps and exercised all due diligence to ensure that the direction would be complied with.

(R.A. 111/2022, s. 23)

(3) A service provider that is guilty of an offence under this section is liable—

- (a) in the case of a company or a partnership—
 - (i) on summary conviction, to a fine of \$10,000, and
 - (ii) on conviction on indictment, to a fine of \$50,000; and

(b) in the case of any other person—

- (i) on summary conviction, to imprisonment for a term of 6 months or to a fine of \$10,000 or to both, or
- (ii) on conviction on indictment, to imprisonment for a term of one year or to a fine of \$50,000 or to both.

(R.A. 36/2013, s. 23 and R.A. 111/2022, s. 23)

Designated supervisory authority

29. The Commission is designated as the sole supervisory authority for non-regulated service providers.

(R.A.s 27/2009, s. 17 and 36/2013, s. 24)

Customer information

30. For the purposes of sections 137 and 138 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 with 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 with the regulated person jointly with the specified person;

(R.A. 36/2013, s. 25(c))

- (i) the account number or numbers of any other account or accounts held with the regulated person to which the specified person is a signatory and details of the person holding the other account or accounts;

(R.A. 36/2013, s. 25(c))

- (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).

(R.A. 27/2009, s. 18)

Prescribed amounts

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

- (a) application of section 32(1) of the Act, 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.

(R.A. 27/2009, s. 18)

Penalties, disciplinary action

32. The maximum penalty that may be imposed by the Commission for a breach of these Regulations or the Codes is the amount prescribed in accordance with section 47(3)(b) of the Financial Services Commission Act.

(R.A. 36/2013, s.26)

Citation

33. These Regulations may be cited as the Anti-Money Laundering and Terrorist Financing Regulations, Revised Regulations of Anguilla, P98-1.

(R.A. 27/2009, s. 20)

SCHEDULE 1
(Section 1)
REGULATORY LICENCES

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

- (a) a licence issued under the Banking Act;
- (b) an offshore banking licence or a trust company licence issued under the Trust Companies and Offshore Banking Act;
- (c) a licence issued under the Company Management Act;
- (d) a Class A or Class B insurer’s licence issued under the Insurance Act, 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:
 - (i) an insurance agent’s licence,
 - (ii) an insurance broker’s licence,
 - (iii) an insurance sub-agent’s licence,
 - (iv) a principal representative’s (insurance) licence;
- (f) an insurance manager’s licence issued under the Insurance Act;
- (g) a licence to act as the manager or administrator of a mutual fund issued under the Mutual Funds Act;
- (h) a licence issued under Part 4 or Part 9 of the Securities Act;
- (i) a licence issued under the Money Services Business Act;
- (j) the following licences issued under the Anguilla Utility Token Offering Act—
 - (i) licence issued on registration as an issuer,
 - (ii) a utility token offering administrator licence;
- (k) a licence issued under the Anguilla Utility Tokens Exchange Act.
(R.A. 36/2013, s. 27 and R.A. 111/2022, s. 24)

SCHEDULE 2
 (Sections 1 and 8)
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 section 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,
- (vi) shares and other transferable securities, or
- (vii) foreign exchange contracts, binary options, contracts for differences and similar instruments.

(R.A. 24/2018, s. 2(a))

- (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;
- (h) a licensed lottery; and
- (i) a person, not otherwise referred to in paragraphs (a) to (h), that by way of business, carries on one or more of the following activities or operations for or on behalf of another person—
 - (i) exchange between virtual assets and fiat currencies,
 - (ii) exchange between one or more forms of virtual asset,
 - (iii) sale or transfer of virtual assets,
 - (iv) safekeeping, custody or administration of virtual assets or instruments enabling control of virtual assets, or
 - (v) *participation in and provision of financial services related to an issuer's offer or sale of a virtual asset.*

(R.A. 87/2020, s. 2)

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 when marketing or otherwise offering its shares;
- (b) a person who, although not licensed under the Mutual Funds Act, 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.

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 3(a) or 3(b).

(R.A. 27/2009, s. 21)

5. For the purpose of—

- (a) section 1(i) of this Schedule, “virtual asset” means a digital representation of value that can be digitally sold, traded or transferred and can be used for payment or investment purposes, but does not include digital representations of fiat currencies, securities or other financial assets that are already covered by these Regulations;
- (b) sections 4 and 5, terms defined in the Insurance Act have the same meaning when used in those sections.

(R.A. 87/2020, s. 3)

SCHEDULE 3

(Section 1)

EXTERNALLY REGULATED SERVICE PROVIDERS

The following are “externally regulated service providers”—

- (a) a person who holds a licence issued under the Banking Act; and
- (b) a person who holds a licence issued under Part 4 or Part 9 of the Securities Act.

(R.A. 36/2013, s. 28)