

**Regulation of Anguilla: 37/2000**

Gazette Dated: 16 October, 2000

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MONEY LAUNDERING REPORTING AUTHORITY ACT, 2000 (Act No.13/2000)

**ANTI-MONEY LAUNDERING REGULATIONS, 2000**

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Regulations made by His Excellency the Governor under section 3 of the Money Laundering Reporting Authority Act, 2000. (Act No 13/2000)

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## Interpretation

### 1. (1) In these Regulations—

“Act” means the Money Laundering Reporting Authority Act 2000;

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

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

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

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

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

“foreign regulated person” means a person—

- (a) that is incorporated in, or, if it is not a corporate body, has its principal place of business in, a jurisdiction outside Anguilla (its “home jurisdiction”);
- (b) that carries on relevant financial services in its home jurisdiction; and
- (c) that is subject to legislation in its home jurisdiction that is at least equivalent to these regulations;

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

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

“money laundering” has the same meaning as in the Act;

“Money Laundering Reporting Officer” means the person appointed by a regulated person under section 7(1)(a);

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

- (a) that constitutes relevant financial business; and
- (b) that is carried out other than in the course of an established business relationship;

“regulated person” means—

- (a) a person licensed or registered to carry on relevant financial business within the meaning of section 2(1) (a) to (g);
- (b) an attorney-at-law engaged in trust business solely in the practice of law; or

- (c) a person carrying on in or from within Anguilla—
  - (i) investment business; or
  - (ii) a business specified in section 2(1)(i).

“relevant financial business” has the meaning set out in section 2(1);

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

(2) Words and expressions defined in the Act and in the Proceeds of Criminal Conduct Act, 2000 have the same meaning in these regulations.

(3) The Criminal Justice (International Co-operation) Act 2000 is prescribed as a provision for the purposes of paragraph (d) of the definition of "money laundering" in section 1.

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

2. (1) In these Regulations “relevant financial business” means—
- (a) banking business as defined in the Banking Ordinance, 1991;
  - (b) offshore banking business as defined in the Trust Companies and Offshore Banking Act, 2000;
  - (c) trust business as defined in the Trust Companies and Offshore Banking Act, 2000;
  - (d) company management business as defined in the Company Management Act, 2000;
  - (e) insurance business as defined in the Insurance Act, 1968;
  - (f) acting as a credit union under the Cooperatives Societies Ordinance, 1961;
  - (g) acting as a friendly society under the Friendly Societies Act, 1928;
  - (h) investment business as defined in subsection (2); or
  - (i) the business of—
    - (i) forming limited partnerships,
    - (ii) providing the registered office for limited partnerships,
    - (iii) providing cheque cashing services,
    - (iv) transmitting or receiving funds by wire or other electronic means,
    - (v) lending, or
    - (vi) financial leasing.
- (2) In these Regulations, investment business means the business of—
- (a) trading for one’s own account or for the account of customers in—

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

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

3. (1) Subject to section 5, a regulated person must establish and maintain procedures that, as soon as practicable after contact is first made between the regulated person and an applicant for business, require—

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

(2) Where an applicant for business is or appears to be acting on behalf of another person, the applicant and each person on whose behalf he acts or appears to act shall, for the purposes of subsection (1), be regarded as an applicant for business.

(3) If satisfactory evidence of the identity of an applicant for business is not produced to or obtained by a regulated person under subsection (1), the regulated person must not form a business relationship or carry out a one-off transaction with the applicant unless, in the case of a one-off transaction, he is directed to carry out the transaction by a police officer or by the Reporting Authority.

(4) For the purposes of this regulation, the question as to what constitutes—

- (a) satisfactory evidence of identity; or
- (b) measures designed to obtain satisfactory evidence of identity;

may be determined in accordance with the Guidance Notes.

#### **Introduced business**

4. (1) Subsection (2) applies where an applicant for business is introduced to a regulated person by a third party ("the introducer") who is—

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

unless any person acting on behalf of the regulated person to whom the application being made knows or suspects that the applicant is engaged in money laundering, or that the transaction is to be carried out on behalf of another person engaged in money laundering.

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

#### **Other exceptions to the identification procedure**

5. (1) Sections 3(1) and 3(2) do not apply where there are reasonable grounds for believing that the applicant for business is—

(a) another regulated person; or

(b) a foreign regulated person;

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

(2) In respect of a one-off transaction, sections 3(1) and 3(2) do not apply where the amount to be paid by or to the applicant for business is less than \$25,000 or the equivalent in another currency unless—

(a) there are reasonable grounds for believing—

(i) that the transaction is linked to one or more other transactions, and

(ii) that the total amount to be paid by or to the applicant for business in respect of all the linked transactions is \$25,000 or more; or

(b) any person handling the transaction on behalf of the regulated person knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is to be carried out on behalf of another person engaged in money laundering.

#### **Records to be kept by regulated person**

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

(a) where he obtains evidence of the identity of an applicant for business as required by these regulations—

(i) a copy of the evidence, or

(ii) a record indicating the nature of the evidence, providing such information as will enable a copy of it to be obtained; and

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

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

(a) in the case of a record kept under paragraph (a), the period of 6 years from the last occurring of the following events—

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

(3) Records required to be kept under this section must be kept in such manner as will enable them to be retrieved or reproduced in legible and useable form within a reasonable period of time.

(4) Notwithstanding subsections (1) and (2), if a regulated person is advised by a police officer or by the Authority or believes that a record is required for the purposes of a money laundering investigation, he must keep the record until the last occurring of the following events—

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

#### **Internal reporting procedures**

7. (1) Subject to subsection (4), a regulated person must establish and maintain internal reporting procedures that, in relation to his relevant financial business, make provision for—

- (a) appointing a person (the “Money Laundering Reporting Officer”) to whom a report is to be made of any information or other matter which comes to the attention of an employee and which, in the opinion of the employee, gives rise to a knowledge or suspicion that another person is engaged in money laundering;
- (b) requiring that any such report be considered by the Money Laundering Reporting Officer in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
- (c) permitting the Money Laundering Reporting Officer to have reasonable access to any other information which may be of assistance to him in considering the report; and
- (d) if the Money Laundering Reporting Officer determines that the information or other matter contained in the report does give rise to a knowledge or suspicion that another person is engaged in money laundering, requiring him to disclose that information or matter to the Authority.

(2) A regulated person must maintain in Anguilla registers in writing of—

- (a) all reports made to the Authority; and
- (b) all enquiries relating to money laundering made to it by the Authority.

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

(4) subsection (1) does not apply to an individual who, in the course of relevant financial business, does not employ or act in association with any other person.

**Training procedures**

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

- (a) of the Drugs Trafficking Offences Ordinance, 1988, the Proceeds of Criminal Conduct Act 2000, the Act, these Regulations, the Guidance Notes, any guidance issued by the Authority and any relevant supervisory or regulatory directions or guidance which apply to that person; and
- (b) of the procedures it maintains in compliance with the duties imposed under these Regulations.

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

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

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

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

**Offences**

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

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

**Status of Guidance Notes and guidance issued by the Authority**

10. In determining whether a person has complied with these Regulations, the Court may take account of—

- (a) the Guidance Notes;
- (b) any guidance issued by the Authority; or
- (c) any relevant supervisory or regulatory directions or guidance which apply to that person.

**Transitional provisions**

11. (1) In this regulation—

“commencement date” means the date upon which these regulations come into force in accordance with section 12; and

"pre-existing business relationship" means a business relationship formed by a regulated person before the date on which these Regulations come into effect.

(2) For the purposes of section 3, any pre-existing business relationship shall be treated as an established business relationship.

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

(4) Notwithstanding section 12, in respect of a person who, on the commencement date, is a regulated person—

(a) section 7 comes into force 3 months after the commencement date; and

(b) section 8 comes into force 6 months after the commencement date.

#### **Citation and commencement**

**12.** These Regulations may be cited as the Anti-Money Laundering Regulations, 2000 and come into force on the day they are published in the *Gazette*.

Made by the Governor this 12<sup>th</sup> day of October, 2000

Peter Johnstone  
Governor of Anguilla