

AML/CFT: Legal Framework, Co-operation & Sanctions

Honourable James M. Wood
Attorney General



Core Legislation

- Proceeds of Crime Act, 2009
- Anti-Money Laundering and Terrorist Financing Regulations, Code and Guidance Notes, 2009
- UK Orders in Council on Terrorist Financing
- Criminal Justice (International Co-operation) Act, R.S.A. c. C145
- International Co-operation (Tax Information Exchange Agreements) Act, 2009

Proceeds of Crime Act, 2009: Principle Elements for FSBs

- Establishment of Reporting Authority
- Money Laundering Offences
- Mandatory Duty to Disclose
- Analytical & Investigative Powers
- Co-operation

Establishment of Reporting Authority

- MLRA continued and established as Anguilla's financial intelligence unit
- MLRA empowered to appoint persons to assist in the performance of its functions
- MLRA has appointed intelligence officers of the RAPF to carry out day to day operations
- Powers of the MLRA/FIU include:
 - Receiving disclosures, including from foreign FIU
 - Requiring disclosure of information supplemental to SARs
 - Co-operation with foreign FIUs
 - Provision of feedback on disclosures
 - Retention of records, compiling and publishing statistical information

What are Proceeds of Crime?

- ***Criminal property***: property that constitutes a person's benefit from criminal conduct (POCA s.123)
- ***Criminal conduct***: conduct which constitutes an offence, or would constitute an offence if it had occurred in Anguilla
- ***Offence***: an offence that—
 - is triable on indictment; or
 - is triable summarily and for which the maximum penalty would be imprisonment for 1 year or more

Predicate Offences

- Fraud
- Corruption and bribery
- Sexual exploitation, including sexual exploitation of children
- Illicit trafficking in narcotic drugs and psychotropic substances
- Illicit arms trafficking, including proliferation financing
- Illicit trafficking in stolen and other goods
- Environmental crime
- Robbery or theft
- Smuggling
- Gambling, including illegal lotteries

Predicate Offences

- Participation in an organised criminal group and racketeering
- Terrorism, including terrorist financing
- Trafficking in human beings and migrant smuggling
- Counterfeiting currency
- Counterfeiting and piracy of products
- Murder, grievous bodily injury
- Kidnapping, illegal restraint and hostage-taking
- Extortion
- Forgery
- Piracy
- Insider trading and market manipulation
- Tax crimes

Money Laundering Offences

- Concealing, disguising, converting, transferring and removing criminal property
- Entering into or becoming concerned in an arrangement which one knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property
- Acquisition, use or possession of criminal property

Penalties for ML

- On summary conviction: imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both
- On conviction on indictment: imprisonment for a term not exceeding 14 years or to a fine without limit or to both

Mandatory Duty to Disclose: Relevant Business

- Where a person—
 - knows or suspects, *or has reasonable grounds for knowing or suspecting*, that another person is engaged in ML; and
 - the information that gives rise to such knowledge, suspicion or grounds therefore came to him in the course of a relevant business,
that person must make a disclosure to the relevant Money Laundering Reporting Officer or to the Reporting Authority
- A person who does not make the required disclosure is guilty of an offence

Mandatory Duty to Disclose: Money Laundering Reporting Officer

- Where a MLRO—
 - knows or suspects, *or has reasonable grounds for knowing or suspecting*, that another person is engaged in ML; and
 - the information that gives rise to such knowledge, suspicion or grounds therefore came to him in consequence of a disclosure made under section 128, or an authorised or protected disclosure that MLRO must make a disclosure to the Reporting Authority
- A MLRO who does not make the required disclosure is guilty of an offence

Duty to Disclose: Related Issues

- Penalties for failure to disclose
 - on summary conviction: imprisonment not exceeding 2 years or a fine not exceeding \$75,000 or both
 - on conviction on indictment: imprisonment not exceeding 10 years or a fine not exceeding \$250,000 or both
- Defense of reasonable excuse for not disclosing
- Legal privilege preserved and extended to trainees, paralegals, legal secretaries, etc.
- Disclosure shall not be treated as breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings

Analytical & Investigative Powers

- Notice requiring production of information to clarify SARs
- Exchange of information with foreign FIUs
- Application to the Court for—
 - Production orders
 - Search and seizure warrants
 - Customer information orders
 - Account monitoring orders

Co-operation

- Enables the Attorney General to assist overseas authorities who make requests for assistance
- AG may apply to the court for enforcement of—
 - External requests: prohibit dealing with relevant property (restraint)
 - External orders: recovery of specified property or a specified sum of money (confiscation)

AML/CFT Regulations

- **Purpose:** prevention of the use of the financial system for money laundering and terrorist financing
- **Application:**
 - Regulated sector
 - Dealers in high value goods
 - Real estate agents
 - Accountants and auditors
 - Legal service providers
 - Foreign branch or subsidiary of Anguilla financial business

AML/CFT Regulations

- **Contents:**

- Customer due diligence and ongoing monitoring
- Enhanced customer due diligence
- Reliance on introducers and intermediaries
- Shell banks and anonymous accounts
- Policies, systems and controls
- Recordkeeping
- Training requirements
- Compliance officers
- MLROs
- Directions where FATF applies counter-measures

AML/CFT Code

- Provides greater detail than AML/CFT Regulations
- Same application as Regulations
- Breach is not a criminal offence, but enforceable administratively by the FSC
- Guidance embedded, but separate

AML/CFT Code

- **Contents:**

- Policies, systems and controls
- Customer due diligence
- Sector specific identification and verification information
- PEPs
- Introducers and intermediaries
- Ongoing monitoring of customer activity
- Reporting suspicious activity and transactions
- Employee training and vetting requirements
- Recordkeeping
- Correspondent Banking
- Wire Transfers

Guidance

- Outlines relevant requirements of legislation
- Provides:
 - Guidance to assist with interpretation of legislative requirements
 - Important background and explanatory information
 - Practical advice on identification and verification of identity and other requirements
- Sets out factors FSC will take into account in considering whether one has complied with legislative requirements

UK Orders in Council on Terrorist Financing

- Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (SI 3366/2001)
- Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002)
- Anti- Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (S.I. 2002 No. 1822)

International Co-operation

- Criminal Justice (International Co-operation) Act, R.S.A. c. C145
 - Service of foreign judicial documents in Anguilla
 - Foreign jurisdiction may obtain evidence in Anguilla for criminal matters
 - Assistance provided by Order of Magistrate
 - Requests cannot be denied solely because they relate to tax matters
- International Co-operation (Tax Information Exchange Agreements) Act, 2009
 - Assistance provided pursuant to TIEAs
 - Duty to provide information on request
- **All requests must be treated as confidential**

Domestic Co-operation

- FSC
- Royal Anguilla Police Force
- Financial Intelligence Unit
- Immigration Department
- Customs Department
- Attorney General's Chambers
- Governor's Office
- Money Laundering Reporting Authority

Sanctions

- ML/TF and breach of reporting requirements are criminal offences
- Other contraventions, enforced by FSC under FSC Act:
 - Enforcement actions (FSCA Part 5):
 - revoke or suspend a licence
 - issue a directive
 - appoint an examiner
 - appoint a qualified person to advise on proper conduct of business
 - issue a public statement
 - Disciplinary actions (FSCA Part 6): imposition of fines up to \$50,000

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