

Regulations of Anguilla

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PROCEEDS OF CRIME ACT, R.S.A. C. P98

**ANTI-MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT)
REGULATIONS, 2022**

Regulations made by the Governor under section 168 of the Proceeds of Crime Act, R.S.A. c. P98.

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**ANTI-MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT)
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Interpretation

1. In these Regulation “principal Regulations” means the Anti-Money Laundering and Terrorist Financing Regulations R.R.A. P98-1.

Amendment of section 1

2. Section 1 of the principal Regulations is amended—

(a) in paragraph (a) of the definition of “AML/CFT obligation”, by deleting Reporting Authority under section 118(2)(b) of the Act” and substituting “Unit under section 20 of the Financial Intelligence Unit Act, 2020”;

(b) by deleting the definition of “beneficial owner” and substituting the following—

““beneficial owner” has the meaning specified in sections 9 to 12 of the Commercial Registry and Beneficial Ownership Registration System Act, 2022;”;

(c) by deleting the definition of FATF Recommendations and substituting the following—

““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;”;

(d) by deleting the definition of “recognised exchange” and substituting the following—

““recognised exchange” has the meaning specified in section 1 of the Commercial Registry and Beneficial Ownership Registration System Act, 2022;”;

(e) by inserting the following new definitions in the appropriate alphabetical order—

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

“foreign listed company” has the meaning specified in section 1 of the Commercial Registry and Beneficial Ownership Registration System Act, 2022;

“listed company” has the meaning specified in section 1 of the Commercial Registry and Beneficial Ownership Registration System Act, 2022;”.

Repeal of section 2

3. The Regulations is amended by repealing section 2.

Amendment of section 3

4. Section 3(2) of the Regulations is amended by deleting paragraphs (a) and (b) and substituting the following—

“(a) the sum of \$2,500, in the case of a transaction, or linked transactions—

(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.”;

“(b) the sum of \$37,500, in the case of any other transaction, or linked transactions.”.

Amendment of section 4

5. Section 4 of the Regulations is amended—

(a) in subsection (1)—

(i) by deleting paragraph (e) and substituting the following—

“(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;”,

(ii) in paragraph (f), by inserting before “obtaining information”, the words “taking the measures necessary to understand and, as appropriate,”,

(iii) by inserting the following new paragraphs after paragraph (f)—

“(fa) 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

(fb) 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.”;

(b) by inserting the following new subsections after subsection (1)—

“(1a) If the customer or third party is a legal person and subsection (1b) 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.

(1b) Subsection (1a) 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.”;

(c) in subsection (2)(a), by deleting “where the customer is not an individual,”;

(d) by deleting subsection (4) and substituting the following—

“(4) Subsections (1)(d), (e) and (fb) do not apply if the customer or third party is a listed company or a foreign listed company.”;

(e) by inserting the following new subsection after subsection (4)—

“(4a) 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.”.

Amendment of section 9

6. Section 9 of the Regulations is amended—

- (a) by deleting “a financial business” in subsections (1), (2), (3) and (4) and substituting “an Anguilla financial business”;
- (b) by deleting “the financial business” in subsections (3) and (4) and substituting “the Anguilla financial business”;
- (c) by deleting subsection (2) and substituting the following—

“(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”;

(d) by inserting the following new subsection after subsection (4)—

“(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.”.

Amendment of section 10

7. Section 10 of the Regulations is amended—

(a) in subsection (1), by deleting paragraph (c) and substituting the following—

“(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,
- (ii) at other appropriate times as determined on a risk based approach.”;

(b) by inserting the following new subsection after subsection (1)—

“(1a) 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.”;

(c) in subsection (5), by deleting paragraph (b) and substituting the following paragraphs—

“(b) there is a low risk of money laundering and terrorist financing;

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

(d) by inserting the following new subsections after subsection (6)—

“(6a) 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.

(6b) 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 132 of the Proceeds of Crime Act;
 - (ii) any counter terrorism laws;
 - (iii) any proliferation financing laws of the Anguilla; or
 - (iv) any Orders in Council issued by the United Kingdom.”.

Amendment of section 11

8. Section 11 of the Regulations is amended in subsection (6)(a), by deleting “Reporting Authority” and substituting “Unit”.

Amendment of section 12

9. Section 12 of the Regulations is amended—

- (a) in subsection (2) by deleting paragraph (b), by substituting the following—
 - “(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 county—
 - (i) that does not apply, or insufficiently applies the FATF Recommendations; or
 - (ii) against which the FATF calls for countermeasures”;
- (b) in paragraphs (d) and (e), by inserting the word “foreign” before the phrase “politically exposed person” in both places that the phrase occurs in each paragraph.

Insertion of section 12A

10. The Regulations are amended by inserting the following new section after section 12—

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

12A. (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.”.

Amendment of section 13

11. The Act is amended in section 13—

- (a) in subsection (2)(b), by inserting the phrase “the identification information and” after the words “a record of”;
- (b) in subsection (3), by inserting the phrase “required to comply with the requirements of these Regulations and the Code” after the words “the customer due diligence information”; and
- (c) by inserting the following new subsection after subsection (2)—

“(2a) 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) 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.”.

Amendment of section 14

12. The principal Regulations is amended by deleting section 14 and substituting the following—

“Simplified due diligence

14. (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—

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

- (5) A service provider must not continue to apply simplified due diligence measures if—
- (a) 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;
 - (b) its risk assessment changes and it considers that there is no longer a low risk of money laundering and terrorist financing;
 - (c) it suspects money laundering or terrorist financing; or
 - (d) any of the matters set out in section 12(2)(b) to (f) apply.”.

Amendment of section 15

13. Section 15(1) of the Regulations is amended—

- (a) by deleting “An Anguilla bank” and substituting “a financial institution”;
- (b) by deleting paragraph (b) and substituting the following—
 - “(b) 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.”.

Amendment of section 16

14. Section 16 of the Regulations is amended in subsection (2)(c)(ii), by inserting the phrase “or against which the FATF calls for countermeasures” after “FATF Recommendations”.

Insertion of section 16A

15. The Regulations are amended by inserting the following new section after section 16—

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

- 16A.** (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 16, and section 5 of the Code apply—
 - (i) to all its subsidiary entities, whether located in or outside Anguilla,
 - (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 subparagraphs (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;
 - (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 2022;
 - (b) where the legal entity is a company, “subsidiary entity” has the same meaning as “subsidiary” under Business Companies Act 2022;
 - (c) “group” means the holding entity and all branches and majority-owned subsidiary entities of the holding entity.”.

Amendment of section 17

16. Section 17(2) of the Regulations is amended—

- (a) in paragraph (d), by deleting “and” after the semi colon;
- (b) in paragraph (e), by deleting the full stop at the end of the paragraph and substituting “; and”;
- (c) by inserting the following paragraph after paragraph (e)—
 - “(ea) 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.”.

Amendment of section 18

17. Section 18 of the Regulations is amended—

- (a) in subsection (1)(b), by deleting “section 17(2)(b), (c), (d) and (e)” and substituting “section 17(2)(b), (c), (d), (e) and (f)”; and
- (b) in subsection (2), by deleting “Reporting Authority” and substituting “Unit”.

Amendment of section 20

18. Section 20 of the Regulations is amended by inserting the following new subsections after subsection (1)—

“(1a) 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) accompanied by an application fee of \$100.

(1b) 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.

(1c) If it satisfied that 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.

(1d) 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.”.

Amendment of section 21

19. Section 21 of the Regulations is amended—

- (a) in subsection (1)(b), by deleting “Reporting Authority” and substituting “Unit”;
- (b) by inserting the following new subsections after subsection (1)

“(1a) 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) accompanied by an application fee of \$100.

(1b) 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.

(1c) If it satisfied that 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.

(1d) 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.

- (1e) 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.”.

Amendment of section 23

20. Section 23 of the Regulations is amended—

- (a) in the marginal note, by deleting “financial businesses” and substituting “service providers”;
- (b) in subsection (1)—
 - (i) by deleting “financial business” and “financial businesses”, wherever each appears in the subsection, and substituting “service provider” and “service providers” respectively,
 - (ii) by inserting the following new paragraph after paragraph (b)—

“(c) a subsidiary of a company that falls within paragraph (b).”;
- (c) by inserting the following new subsection after subsection (1) –

“(1a) A direction under section 24 may impose requirements in relation to—

 - (a) a particular person within subsection (1);
 - (b) any description of persons within subsection (1);
 - (c) all persons within subsection (1).”;
- (d) in subsection (2)—
 - (i) in paragraphs (a)(iii) and (b)(iii), by inserting “,constituted, incorporated or formed” after “resident”,
 - (ii) by deleting “and that this poses a significant risk to the interests of Anguilla”;
- (e) in subsection (3)—
 - (i) in paragraph (b), by deleting “to the interests of Anguilla”,
 - (ii) in paragraph (c), by deleting “financial businesses” and substituting “service providers”; and

(f) in subsection (4), by deleting “financial businesses” and substituting “service providers”.

Amendment of section 24

21. Section 24 of the Regulations is amended—

(a) in subsection (1)—

(i) by deleting “financial business” and substituting “service provider”,

(ii) by deleting subparagraph (i) and substituting the following—

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

(b) in subsection (4), by deleting “financial business” and substituting “service provider”.

Amendment of section 25

22. Section 25 of the Regulations is amended in subsections (4), (5) and (6), by deleting “financial business” wherever it appears and substituting “service provider”.

Amendment of section 26

23. Section 26 of the Regulations is amended in subsections (1), (2) and (3), by deleting “financial business” wherever it appears and substituting “service provider”.

Amendment of Schedule 1

24. Schedule 1 is amended by inserting the following after paragraph (i)—

“(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 Utility Tokens Exchange Act.”.

Citation

25. These Regulations may be cited as the Anti-Money Laundering and Terrorist Financing (Amendment) Regulations, 2022.

Made by the Governor on this day of , 2022

Dileeni Daniel-Selvaratnam
GOVERNOR OF ANGUILLA