

Regulations of Anguilla: /2022

Gazette Dated: , 2022

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

**EXTERNALLY AND NON-REGULATED SERVICE PROVIDERS (AMENDMENT)
REGULATIONS 2022**

Regulations made by the Governor in Council under section 159 of the Proceeds of Crime Act, R.S.A. c. P98.

Interpretation

1. In these Regulations, the “principal Regulations” means the Externally and Non-Regulated Service Providers Regulations R.R.A. P98-6.

Insertion of sections 17A to 17C

2. The principal Regulations are amended by inserting the following new sections after section 17—

“Imposition of penalty against director or senior manager

17A. (1) A supervisory authority may impose an administrative penalty on a director or senior manager of a service provider if—

- (a) it takes disciplinary action against a service provider under this Part in respect of a disciplinary violation; and
- (b) it is satisfied that the disciplinary violation was committed with the consent or connivance of the director or senior manager.

(2) Where it intends to impose an administrative penalty on a director or senior manager of a service provider, a supervisory authority shall send to the director or senior manager a notice—

- (a) specifying—
 - (i) the disciplinary violation, or alleged disciplinary violation, which the supervisory authority alleges the director or senior manager consented to or connived in the commission of,
 - (ii) the basis for the allegation against the director or senior manager, and
 - (iii) the amount of the penalty that it intends to impose; and
- (b) accompanied by a copy of the notice sent to the service provider under section 12.

(3) A notice may not be sent to a director or senior manager of a service provider under subsection (2) before the supervisory authority has sent a notice to the service provider under section 12.

(4) A director or senior manager of a service provider who receives a notice sent under subsection (2) may, within 28 days of the date on which he receives the notice, send written representation to the supervisory authority—

- (a) denying that the service provider committed the disciplinary violation, or disputing the facts of the disciplinary violation;
- (b) denying that the director or senior manager consented to, or connived in, the commission of the disciplinary violation; or
- (c) providing reasons that justify the imposition of a lower penalty.

(5) For the purposes of this section and sections 17B and 17C, “senior manager” means an employee of a service provider who—

- (a) acts as chief executive officer of the service provider or occupies an equivalent position under a different name;
- (b) holds a position that includes direct involvement in the management or decision-making process of the service provider at a senior level.

Penalty notice

17B. (1) After the expiration of 28 days from the date that it sent a notice under section 17A(2) to a director or senior manager, a supervisory authority may impose an administrative penalty on the director or senior manager by sending the director or senior manager a penalty notice—

- (a) stating—
 - (i) the disciplinary violation that the director or senior manager consented to or connived in the commission of,
 - (ii) the date on which the notice under subsection (2) was sent to the director or senior manager, and
 - (iii) the amount of the penalty imposed,
 - (iv) a date, not less than 28 days after the date of the penalty notice, by which the penalty shall be paid to the supervisory authority, and
 - (v) that if the director or senior manager does not pay the administrative penalty or exercise his rights of appeal under section 162 of the Act, on or before the date referred to in subparagraph (iv), the director or senior manager will be liable for the penalty set out in the notice; and
- (b) accompanied by the penalty notice sent to the service provider under section 13.

(2) The penalty imposed in a penalty notice shall not exceed the amount specified in the notice of intention sent under section 17A.

(3) A supervisory authority shall consider any written representations that it has received from the director or senior manager before imposing an administrative penalty on the director or senior manager and, where it receives any representations, the supervisory authority must provide reasons for the action that it takes.

(4) A director or senior manager of a service provider who receives a penalty notice under subsection (1) shall pay the penalty stated to the supervisory authority or appeal the imposition of the penalty under section 162 of the Act, on or before the date specified in the notice.

Fixing of administrative penalty

17C. (1) Where a supervisory authority decides to impose an administrative penalty on a director or senior manager of a service provider, it shall, after taking account of the factors specified in this section, fix the amount of the administrative penalty in an amount not exceeding \$50,000.

(2) In determining the administrative penalty to be imposed on a director or senior manager of a service provider, a supervisory authority—

- (a) shall take into account—
 - (i) the nature and severity of the disciplinary violation committed by the service provider and the amount of the administrative penalty imposed on the service provider, and
 - (ii) the role played by the director or senior manager in the commission of the disciplinary violation by the service provider; and
- (b) may take into account such other matters as it considers appropriate.”.

Citation

3. These Regulations may be cited as the Externally and Non-Regulated Service Providers (Amendment) Regulations, 2022.

Made by the Governor in Council this _____ day of _____, 2022.

Dileeni Daniel-Selvaratnam
GOVERNOR IN COUNCIL