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THE PROCEEDS OF CRIME LAW (2017 REVISION)

**THE ANTI-MONEY LAUNDERING (DESIGNATED NON-FINANCIAL
BUSINESS AND PROFESSIONS) (AMENDMENT) (NO. 2)
REGULATIONS, 2017**

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ARRANGEMENT OF REGULATIONS

1. Citation
2. Amendment of regulation 2 of the Anti-Money Laundering Regulations,
2017 - definitions
3. Insertion of Part XIA - Designated Non-Financial Business and Professions

THE PROCEEDS OF CRIME LAW (2017 REVISION)

THE ANTI-MONEY LAUNDERING (DESIGNATED NON-FINANCIAL BUSINESS AND PROFESSIONS) (AMENDMENT) (NO. 2) REGULATIONS, 2017

In exercise of the powers conferred by sections 4(9), 145 and 201 of the Proceeds of Crime Law (2017 Revision) the Cabinet, on the recommendation of the Anti-Money Laundering Steering Group, the Monetary Authority and the Financial Reporting Authority, makes the following Regulations -

1. These Regulations may be cited as the Anti-Money Laundering (Designated Non-Financial Business and Professions) (Amendment) (No. 2) Regulations, 2017. Citation

2. The Anti-Money Laundering Regulations (2017 Revision), in these Regulations referred to as the “principal Regulations”, are amended in regulation 2 as follows - Amendment of regulation 2 of the Anti-Money Laundering Regulations (2017 Revision) - definitions

(a) by inserting after the definition of “competent authority” the following definition -

““connected person” means, in relation to a DNFBP -

- (a) a manager or beneficial owner of the DNFBP (reading the definition of “beneficial owner” in these Regulations as if the words “owns or controls the DNFBP” were substituted for the words “owns or controls the customer or on whose behalf a transaction or activity is being conducted”); and
- (b) a director, secretary or senior executive, in the case of a DNFBP that is a body corporate, partnership or unincorporated body, regardless of job title;

- (b) by inserting after the definition of “customer” the following definition -

“ “designated non-financial business and profession” or “DNFBP” means a natural or legal person designated under regulation 55A;” and

- (c) by inserting after the definition of “financial group” the following definitions -

“ “firm” means -

- (a) in respect of attorneys at law -
- (i) a body corporate, association, partnership or limited liability partnership of attorneys who are admitted to practice law in the Islands; or
 - (ii) an attorney admitted to practice law in the Islands who is in independent practice as a sole proprietor or who provides legal services to an employer other than the Government; and
- (b) in respect of accountants -
- (i) a body corporate, association, partnership or limited liability partnership of accountants who are members of the Cayman Islands Institute of Professional Accountants in public practice;
 - (ii) an accountant in public practice as a sole proprietor who is a member of the Cayman Islands Institute of Professional Accountants or who provides accountancy services to an employer other than the Government; or
 - (iii) an accountant who is not a member of the Cayman Islands Institute of Professional Accountants who provides, as an independent contractor, accountancy services that are not required to be licensed under the Accountants Law, 2016, pertaining to the recording, review, analysis, calculation or reporting of financial information; and

“former DNFBP” means a person who at any time has been carrying on business as a DNFBP, but who has ceased to carry on the DNFBP.”.

3. The principal Regulations are amended by inserting after Part XII the following Part -

Insertion of Part XIII -
Designated Non-
Financial Business and
Professions

“Part XIII - Designated Non-Financial Business and Professions

Designation of DNFBPs and Supervisory Authorities

Designated non-
financial
business and
professions

55A. The following businesses and professions are designated as DNFBPs -

- (a) real estate agents and brokers;
- (b) dealers in precious metals;
- (c) dealers in precious stones;
- (d) firms of accountants; and
- (e) firms of attorneys at law.

Supervisory
Authorities of
DNFBPs

55B. The following bodies are designated as Supervisory Authorities of the following DNFBPs for the purposes of this Part -

- (a) the Department of Commerce and Investment - for real estate agents and brokers, dealers in precious metals and dealers in precious stones;
- (b) the Cayman Islands Institute of Professional Accountants - for firms of accountants that engage in or assist other persons in the planning or execution of relevant financial business, or otherwise act for or on behalf of such persons in relevant financial business; and
- (c) a public body or self-regulatory body assigned by Cabinet by Order - for firms of attorneys at law that engage in or assist other persons in the planning or execution of relevant financial business, or otherwise act for or on behalf of such persons in relevant financial business.

Cooperation
among
Supervisory
Authorities

55C. (1) Where there is more than one Supervisory Authority for a DNFBP, the Supervisory Authorities may agree that one of them will act as the Supervisory Authority for that DNFBP.

(2) Where an agreement is made under paragraph (1), the Authority which has agreed to act as the Supervisory Authority shall notify the DNFBP or publish the agreement in such manner as it considers appropriate.

(3) Where no agreement is made under paragraph (1), the Supervisory Authorities for a DNFBP shall cooperate in the performance of their functions under this Part.

(4) Where natural or legal persons within a group structure are subject to supervision by different Supervisory Authorities, the Supervisory Authorities may cooperate with each other in the performance of their functions and shall consider any directives or recommendations of other authorities, made in relation to other persons in the group, in carrying out their supervisory responsibilities.

Duties
of
Supervisory
Authorities

55D. (1) A Supervisory Authority -

- (a) shall effectively monitor every DNFBP for which it is designated if the DNFBP is conducting relevant financial business;
- (b) shall take necessary measures to ensure compliance by DNFBPs referred to in paragraph (a) with these Regulations; and
- (c) may issue guidance, directives and procedures to be followed by DNFBPs referred to in paragraph (a) in order to promote compliance with these Regulations.

(2) A Supervisory Authority shall, as soon as practicable after the end of its financial year -

- (a) make a report on its activities under this Part during the year to the Steering Group; and
- (b) publish the report in such manner as it thinks appropriate.

DNFBP Register

Duty to maintain
DNFBP Register

55E. (1) A Supervisory Authority shall establish and maintain, in such form as it may determine to be appropriate, a

DNFBP Register of all DNFBPs for which it is designated
Supervisory Authority under this Part.

(2) The DNFBP Register shall contain the following
information in respect of each DNFBP -

- (a) in the case of a body corporate, the name, country of incorporation, date of incorporation and registered office of the person;
- (b) in the case of a partnership or limited liability partnership, the name, country of formation, date of formation and registered office of the partnership;
- (c) in the case of a person that is not a corporate body, partnership or limited liability partnership, the name and address of the person;
- (d) the principal business address of the person in Cayman Islands and the person's telephone number and e-mail address, if any;
- (e) in the case of a DNFBP that is licensed or regulated -
 - (i) the type of licence held by the DNFBP; and
 - (ii) the name and address of the applicable licensing body or regulator;
- (f) the relevant business for which the person is registered or licensed;
- (g) the date of registration and, if applicable, de-registration of the DNFBP; and
- (h) such other information as the Supervisory Authority considers appropriate.

(3) The DNFBP Register and the information contained in any document filed with the Supervisory Authority may be kept in such manner as the Supervisory Authority considers appropriate, including either wholly or partly, by means of a device or facility that -

- (a) records or stores information magnetically, electronically or by other means; and
- (b) permits the information recorded or stored to be inspected and reproduced in legible and

usable form.

Requirement for registration 55F. Every person who carries on, or intends to carry on business as a DNFBP in or from within the Islands shall submit to the Supervisory Authority designated for that DNFBP -

- (a) a written declaration that the person carries on or intends to carry on business as a DNFBP; and
- (b) the registration information required under regulation 55E(2).

Cancellation of registration 55G. (1) Subject to regulation 55I, a Supervisory Authority may cancel the registration of a DNFBP if -

- (a) the DNFBP contravenes or fails to comply with a provision of these Regulations;
- (b) the person carrying on business as a DNFBP or a connected person in relation to that DNFBP is not, in the opinion of the Supervisory Authority, a fit and proper person as described in regulation 55H; or
- (c) the Supervisory Authority is satisfied that the DNFBP has ceased to carry on business or is a company which the Registrar has struck off the register of companies under section 156(1) of the Companies Law (2016 Revision).

(2016 Revision)

(2) A Supervisory Authority shall not cancel the registration of a DNFBP under paragraph (1)(a) unless, in the opinion of the Supervisory Authority -

- (a) the breach cannot be adequately sanctioned by imposing an administrative fine under regulation 55U; or
- (b) the contravention or failure to comply is so serious, egregious or frequent as to preclude the DNFBP from being permitted to continue to carry on relevant financial business in the Islands.

Fit and proper person test 55H. (1) In determining whether a person is a fit and proper person to carry on business as a DNFBP or to hold any particular position, regard shall be had to -

- (a) the person's probity, competence and soundness of judgement for fulfilling the

- responsibilities of that position;
- (b) the diligence with which the person is fulfilling or likely to fulfil those responsibilities; and
- (c) whether the interests of the DNFBP are, or are likely to be, in any way threatened by the person holding that position.

(2) Without prejudice to the generality of paragraph (1), regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person has -

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment designed for protecting members of the public against financial loss due to -
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of services by the non-financial business or profession or the management of companies; or
 - (ii) the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on the person's method of conducting business; and
- (d) engaged in or has been associated with any other business practices or otherwise acted in such a way as to cast doubt on the person's competence and soundness of judgement.

Representations
by DNFBP

55I (1) Where a Supervisory Authority proposes to cancel the registration of a DNFBP, it shall give a warning notice to the DNFBP stating -

- (a) the proposed date from which the cancellation is to take effect;
- (b) the reasons for its decision; and
- (c) the right of the DNFBP to make representations to the Supervisory Authority objecting to the cancellation, within a specified

period of not less than thirty days.

(2) After considering any representations made by the DNFBP, the Supervisory Authority shall decide within one month of the end of the period specified in paragraph (1)(c) whether to cancel the DNFBP's registration.

Notification of cancellation of registration

55J (1) If the Supervisory Authority decides to cancel the registration of the DNFBP, it shall provide a notice of the decision, together with the reasons for the decision, to the person carrying on business as a DNFBP and to one of the following -

- (a) the Trade and Business Licensing Board, if the person holds a licence granted under section 21 of the Trade and Business Licensing Law, 2014 for carrying on that business;
- (b) the Council of the Professional Institute of Public Accountants, if the person holds a licence granted under section 11 or 12 of the Accountants Law, 2016 for carrying on that business; or
- (c) the Chief Justice, if the DNFBP is carried on by -
 - (i) a natural person admitted to practice as an attorney at law under the Legal Practitioners Law (2015 Revision); or
 - (ii) a firm or recognized body holding an annual operational licence issued under section 13 of the Legal Practitioners Law (2015 Revision).

(2015 Revision)

(2015 Revision)

(2) The notice provided to a licensing body or other authority under paragraphs (1)(a), (b) or (c) shall include a recommendation from the Supervisory Authority that the body or authority suspend, revoke or limit the DNFBP's licence in order to prevent it from carrying on relevant financial business in the Islands.

Obligations of DNFBs

Duty to provide information and documents requested by

55K. (1) A person carrying on business as a DNFBP, or a connected person in relation to the DNFBP, who receives a

Supervisory Authority notice from the Supervisory Authority designated for that DNFBP requesting specified information, recorded information or documents shall provide the information or documents to the Supervisory Authority within the period, and at the place, specified in the notice.

(2) A person carrying on business as a DNFBP, or a connected person in relation to the DNFBP, who receives a notice from the Supervisory Authority designated for that DNFBP requesting the person to attend before the Supervisory Authority to answer questions, shall do so at the place and time specified in the notice.

(3) In relation to information recorded otherwise than in legible form, the notice may require a copy of the information in legible form or in a form from which it can readily be produced in visible and legible form.

(4) The production of a document does not affect any lien which a person has on the document.

Limitation 55L. (1) A person is not required to provide information or documents or to answer questions under regulation 55K unless-

- (a) the notice sets out the reasons why the Supervisory Authority requires the information; and
- (b) the information, documents or answers are reasonably required by the Supervisory Authority in the exercise of its responsibilities under this Part.

(2) A person is not required under regulation 55K to provide or produce information, or to answer questions, which the person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the Grand Court, except that an attorney at law may be required to provide the name and address of the attorney's client.

(3) Section 170 of the Law applies with appropriate modifications to statements made by a person in compliance with a duty imposed under regulation 55K(2) as the section applies to statements made by a relevant institution in response

to a customer information order.

Duty to allow
site visits by
Supervisory
Authority

55M. (1) A person carrying on business as a DNFBP or a connected person in relation to the DNFBP shall, on request by the Supervisory Authority designated for that DNFBP, allow an officer or employee of the Supervisory Authority, on producing evidence of authority, to have access at any reasonable time to any premises being used in connection with the business of the DNFBP and shall allow the officer or employee -

- (a) to enter and inspect the premises;
- (b) to observe the carrying on of business;
- (c) to inspect any recorded information found on the premises and to take copies of, or extracts from, any such information; and
- (e) to ask any person on the premises for an explanation of any recorded information or to state where it may be found.

(2) A person is not required to allow access to premises under paragraph (1) unless the information sought by the officer or employee of the Supervisory Authority is reasonably required by the Supervisory Authority in the exercise of its functions under this Part.

Failure to
comply with
information
requirements

55N. (1) If, on an application made by a Supervisory Authority, it appears to the Grand Court that a person has failed to do something that they were required to do under regulation 55K(1) or (2) or 55M(1) the Court may make an order under this regulation.

(2) An order under this regulation may require the person referred to in paragraph (1) -

- (a) to do the thing that the person failed to do within such period as may be specified in the order; or
- (b) otherwise to take such steps to remedy the consequences of the failure as may be specified by the Court.

(3) If the person referred to in paragraph (1) is a body corporate, a partnership or an unincorporated body of persons

which is not a partnership, the order may require any officer of the body corporate, partnership or unincorporated body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.

(4) In subsection (3), “officer” includes a director, secretary or senior executive of the body corporate, partnership or unincorporated body, regardless of job title.

False misleading information

or

55O. A person shall not, for any purpose of this Part -

- (a) provide any information, make any representation or submit any document to a Supervisory Authority that the person knows to be false or materially misleading or does not believe to be true; or
- (b) recklessly provide any information, make any representation or submit any document to a Supervisory Authority that is false or materially misleading.

Restrictions on the Disclosure of Information by Supervisory Authorities

Prohibition disclosure information

on of

55P. (1) A person shall not disclose protected information without the consent of -

- (a) the person from whom the information was obtained; and
- (b) if different, the person to whom the information relates.

(2) In this regulation “protected information” -

- (a) means information relating to the business or affairs of any person that is acquired by one of the following persons for the purposes of discharging the person’s functions under the Law -
 - (i) the Supervisory Authority or one of its officers or employees; or
 - (iii) a person acting under the authority of a DNFBP or an officer or employee of that person; but
- (b) does not include information that -

- (i) is or has been available to the public; or
- (ii) is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.

Where disclosure permitted is

55Q. Regulation 55P does not apply to a disclosure -

- (a) by a person specified paragraph (1)(a) or (b) of that regulation if the disclosure is made for the purpose of discharging any function or exercising any power under the Law, whether the function or power is of the person disclosing the information or of the Supervisory Authority;
- (b) by any person where the disclosure is -
 - (i) made to a competent authority or a Supervisory Authority;
 - (ii) made in accordance with an order of any Court of competent jurisdiction in the Islands; or
 - (iii) required or permitted by the Law or any other law; or
- (c) by a person other than the Supervisory Authority, where the disclosure is made with the written consent of the Supervisory Authority and could lawfully have been made by it.

Administrative Fines

Power to impose administrative fines

55R. (1) A Supervisory Authority designated for a DNFBP may impose an administrative fine on the DNFBP if it contravenes a provision of these Regulations.

(2) A fine imposed under this regulation shall not exceed \$100,000 for a natural person or \$250,000 for a legal person.

Factors to be considered by Supervisory

55S. (1) In deciding whether to impose a fine, and the amount of the fine, the Supervisory Authority shall consider the

Authority following factors -

- (a) the nature and seriousness of the contravention committed by the DNFBP;
- (b) whether the DNFBP has previously contravened these Regulations and if so, the number and seriousness of such contraventions;
- (c) whether the DNFBP has followed any guidance, directives or procedures issued by the Supervisory Authority under regulation 55D(1)(c);
- (d) whether the contravention was deliberate or reckless or caused by the negligence of the DNFBP;
- (e) whether any loss or damage has been sustained by third parties as a result of the contravention;
- (f) whether there has been any gain to the DNFBP as a result of the contravention; and
- (g) the ability of the DNFBP to pay the fine.

(2) The Supervisory Authority may also take into account such other matters as it considers appropriate.

Limitation period

55T. (1) The Supervisory Authority shall not impose a fine after the expiration of two years from the date on which it became aware of the contravention.

(2) For the purposes of subsection (1), the Supervisory Authority is deemed to have become aware of the contravention when it first received information from which the contravention could reasonably be inferred.

Options for proceedings against contraventions

55U. (1) Where a contravention against these Regulations may be proceeded with by imposing an administrative fine or as an offence, the Supervisory Authority may, subject to paragraph (2) -

- (a) commence proceedings by issuing a fine notice; or
- (b) recommend to the Director of Public Prosecutions that the contravention be prosecuted as an offence.

(2) Proceeding in respect of an act or omission by

issuing a fine notice precludes proceeding with it as an offence, and proceeding with it as an offence precludes issuing a fine notice.

Procedure for
imposing
administrative
fines

55V.(1) Before a Supervisory Authority imposes an administrative fine on a DNFBP in relation to which it is the designated Supervisory Authority, it shall give the DNFBP a warning notice stating -

- (a) its intention to impose the fine and the proposed amount;
- (b) the reasons for imposing the fine; and
- (c) the right of the DNFBP to rectify the contravention, or to make representations to the Supervisory Authority objecting to the proposed imposition of an administrative fine or the amount of the fine, within a specified period of not less than thirty days.

(2) If the person carrying on business as a DNFBP pays the penalty proposed in the warning notice, the person is deemed to have committed the contravention and proceedings in respect of it are ended.

(3) If the Supervisory Authority is satisfied that the DNFBP has rectified the contravention referred to in the warning notice within the period specified in the notice, the Supervisory Authority shall -

- (a) refrain from imposing a fine on the DNFBP; and
- (b) give the DNFBP notice of its decision without delay.

(4) After considering any representations made by or on behalf of the DNFBP, the Supervisory Authority shall decide, within one month from the end of the period specified in paragraph (1)(c) to impose a fine, a lesser fine or no fine.

(5) A person who neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the contravention and the Supervisory Authority may impose the penalty proposed, a lesser penalty or no

penalty.

(6) The Supervisory Authority shall, within ten days of deciding to impose a fine, give the DNFBP a decision notice stating -

- (a) its decision not to impose a fine; or
- (b) its decision to impose a fine, including the amount of the fine, the reasons for its decision and the right of the DNFBP to apply to the Grand Court for leave to appeal the fine.

Public
statements

55W. (1) Subject to paragraph (4), the Supervisory Authority may issue a public statement in such manner as it considers fit setting out enforcement action that it has taken, against a DNFBP or former DNFBP.

(2) A public statement may include such information as the Supervisory Authority considers appropriate, including -

- (a) the reasons for the enforcement action; and
- (b) the nature of the enforcement action.

(3) Where it considers it in the public interest to do so, the Supervisory Authority may issue a public statement in such manner as it considers fit with respect to -

- (a) any person that the Supervisory Authority has reasonable grounds to believe is carrying on, has carried on, or is likely to carry on business as a DNFBP without being registered as required under this Part; and
- (b) any matter relating to the risks of money laundering or terrorist financing by a DNFBP or former DNFBP.

(4) Before a Supervisory Authority issues a public statement under this regulation, it shall give the DNFBP or former DNFBP named in the statement seven days written notice of its intention to do so and provide the reasons for issuing the statement.

(5) Notwithstanding paragraph (4), if the Supervisory Authority is of the opinion that it is in the public interest to do so, it may issue the public statement without notice to the DNFBP or former DNFBP or with such shorter notice period

as the Supervisory Authority considers appropriate.

Appeals by DNFBPs

Appeals

55X. (1) A DNFBP may apply to the Grand Court, within thirty days of receiving notice of the decision, for leave to appeal a decision by a Supervisory Authority to impose an administrative fine under regulation 55U or the amount of the fine imposed.

(2) An appeal of a decision referred to in paragraph (1) can only be made to the Grand Court -

- (a) on a ground
 - (i) available for seeking judicial review of the decision; or
 - (ii) that the decision was made with a lack of proportionality or was not rational; and
- (b) if the Court's leave is obtained.

Application of
Grand Court
Rules and
practice about
judicial reviews

55Y. (1) The provisions of the Grand Court Rules 1995 and the Court's practice directions about judicial reviews apply to an appeal under regulation 55X, with necessary changes, as if the appeal were an application for judicial review.

(2) After hearing the appeal, the Grand Court may -

- (a) affirm, set aside or vary the original decision; or
- (b) set aside the original decision and remit the matter to the Supervisory Authority for it to reconsider with directions the Court considers fit.

Security costs for

55Z. The Supervisory Authority may apply to the Grand Court-

- (a) for an order that the appellant provide sufficient security for costs; and
- (b) for a stay of the appeal proceedings until such security is provided.

Stay of original
decision only by
application

55ZA. (1) An appeal does not stay the operation of the original decision, but the Grand Court may, on the appellant's application, order that the decision be stayed to secure the

effectiveness of the appeal.

(2) The stay -

- (a) may be given on conditions that the Court considers appropriate;
- (b) operates for the period fixed by the Court; and
- (c) may be amended or revoked by the Court.

(3) The period of a stay cannot extend past when the Court decides the appeal.

Payment of Fines and Enforcement

Fine is a debt to
the
Crown

55ZB. (1) A fine becomes a debt owing to the Crown on the day that the fine was required to be paid under the relevant fine notice and the unpaid amount of the fine may be recovered by the Crown in a civil proceeding as a debt.

(2) Paragraph (1) is subject to any setting aside or variation of the fine on appeal.

Electronic
notices by the
Authority

55ZC. (1) A Supervisory Authority may give a party a notice for any purpose of this Part by sending it to an email address that the party last gave the Supervisory Authority notice of, as follows -

- (a) the party's email address;
- (b) if the party is a body corporate (either in its own right or as a trustee of a trust), the email address of -
 - (i) any of its directors or members; or
 - (ii) its registered office provider; or
- (c) if the party is a partnership, the email address of -
 - (i) any of its partners; or
 - (ii) its registered office provider (if it has a registered office).

(2) In this regulation -

“partners” does not include a limited partner of a limited partnership; and

“registered office provider” means the person who provides or maintains the party’s registered office as required under a Law.

Evidentiary provisions

55ZD. (1) A signature purporting to be the signature of anyone acting on the Supervisory Authority’s behalf is evidence of the signature it purports to be.

(2) A certificate signed, or purporting to be signed, by anyone acting on the Supervisory Authority’s behalf stating a matter as follows is evidence of that matter -

- (a) that a stated document is a copy of a notice given under this Part;
- (b) that an email address stated in the copy was, when the notice was given to its stated recipient, the recipient’s email address under regulation 55ZC;
- (c) that on a stated day the recipient was given the notice in a stated way; or
- (d) that a fine of a stated amount is owing by a stated person.

Transitional provision

55ZE. A person who at the commencement of this Part is carrying on business as a DNFBP does not contravene regulation 55F if, within ninety days of the date on which this Part comes into force, the person makes the declaration and provides the information required under that regulation .”.

Made in Cabinet this 12th day of December, 2017.

Davina Wilson

Acting Clerk of the Cabinet.