

CAYMAN ISLANDS



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THE PROCEEDS OF CRIME LAW, 2008

(NO. 10 OF 2008)

THE MONEY LAUNDERING (AMENDMENT) REGULATIONS, 2008

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ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred by section 145 of the Proceeds of Crime Law, 2008, the Governor in Cabinet, upon the recommendation of the Monetary Authority and the Financial Reporting Authority, makes the following regulations -

1. These regulations may be cited as the Money Laundering (Amendment) Regulations, 2008. Citation

2. The Money Laundering Regulations (2008 Revision), in these regulations referred to as the “principal Regulations”, are amended in regulation 2(1) by inserting, after the definition of the term “payment service provider”, the following definition- Amendment of regulation 2 of the Money Laundering Regulations (2008 Revision) – definitions

““regulatory laws” means-

- (a) the Banks and Trust Companies Law (2007 Revision);
- (b) the Building Societies Law (2001 Revision);
- (c) the Companies Management Law (2003 Revision);
- (d) the Cooperative Societies Law (2001 Revision)
- (e) the Insurance Law (2008 Revision);
- (f) the Money Services Law (2003 Revision);
- (g) the Mutual Funds Law (2007 Revision);
- (h) the Securities Investment Business Law (2004 Revision); and
- (i) any other Law that may be prescribed by the Governor by regulations made under section 46 of the Monetary Authority Law (2008 Revision);”.

3. The principal Regulations are amended in regulation 5 as follows-

- (a) in subregulation (1)(a)(iv) by inserting after the words “appropriate for” the words “the ongoing monitoring of business relationships or one-off transactions for”;
- (b) in subregulation (1)(c)(ii) by deleting the word “and” at the end of the subparagraph;

Amendment of regulation 5 – systems and training to prevent money laundering

- (c) in subregulation (1)(d) by deleting the full stop and substituting “; and”;
 - (d) by inserting after subregulation (1)(d) the following paragraph-
 - “(e) designates a person, at management level, to be a compliance officer with responsibility for monitoring and ensuring internal compliance with the Laws relating to money laundering.”;
 - (e) by inserting after subregulation (1) the following subregulation-
 - “ (1A) A person shall not, in the course of relevant financial business to which this subregulation applies and which is carried on by him in or from the Islands, form a business relationship, or carry out a one-off transaction, with any institution that-
 - (a) is carrying on relevant financial business to which this subregulation applies;
 - (b) has no physical presence in the territory in which it is incorporated or in which it is carrying on such business, as the case may be; and
 - (c) is unaffiliated with a regulated financial group that is subject to consolidated supervision.”;
 - (f) by inserting after subregulation (3) the following subregulation-
 - “ (3A) Subregulation (1A) applies to any of the activities set out in-
 - (a) regulation 4(1)(a) (insofar as it relates to banking business);
 - (b) regulation 4(1)(b) and (c); and
 - (c) paragraphs 4 and 10 of the Second Schedule.”;
- and
- (g) by inserting after subregulation (4) the following subregulation-
 - “ (4A) In determining whether to exercise any of its enforcement powers under the regulatory laws, the Authority shall take into account whether there has been any non-compliance with-
 - (a) these regulations; or
 - (b) any supervisory or regulatory guidance.”.

Amendment of
regulation 7 -
identification
procedures; business
relationships and
transactions

4. The principal Regulations are amended in regulation 7 by inserting after subregulation (6) the following subregulation-

“ (6A) Subject to regulations 8, 9 and 10, where the applicant for business is a legal person or constituted as a legal arrangement, satisfactory evidence of identity shall be obtained in respect of-

- (a) the person acting on behalf of, or with the authority of, the applicant for business, together with evidence of such authority; and
- (b) the natural person who ultimately owns or controls the applicant for business.”.

5. The principal Regulations are amended in regulation 9(4) by deleting the words “; but a person bound by regulation 5(1) remains liable for any failure to so obtain and record satisfactory evidence of such identity”.

Amendment of regulation 9 - identification procedures; transactions on behalf of another

6. The principal Regulations are amended in regulation 10(1) as follows-

Amendment of regulation 10 - identification procedures; exemptions

- (a) in paragraph (c) by inserting after the words “where a” the words “business relationship is formed or”;
- (b) by deleting the word “or” appearing at the end of paragraph (c)(i);
- (c) by inserting the word “or” at the end of paragraph (c)(ii);
- (d) by inserting after paragraph (c)(ii) the following subparagraph-
 - “(iii) that person provides the identification information in relation to which he has obtained and recorded evidence;”; and

(e) by inserting after subregulation (1) the following subregulation-

“ (1A) A person who is bound by regulation 5(1) and is relying on an introduction effected under subregulation (1)(c) in respect of a third party, remains liable for any failure of the person making the introduction to obtain and record satisfactory evidence of the identity of the third party.”.

7. The principal Regulations are amended in regulation 11 as follows -

Amendment of regulation 11 - identification procedures; supplementary provisions

- (a) in subregulation (1) by deleting the full stop appearing at the end of paragraph (b) and substituting a semi colon;
- (b) by inserting below subregulation (1)(b) the words “but where a person who is bound by regulation 5(1) has doubts as to the veracity or accuracy of any evidence of identity, that evidence shall be satisfactory only if that person obtains satisfactory additional evidence of identity.”; and
- (c) by inserting after subregulation (2) the following subregulation-

“ (3) The simplified identification procedures permitted in regulations 8 and 10 shall not be applied in any case where a person bound by regulation 5(1) has reasonable grounds to assess that the case presents a higher risk of money laundering.”.

Amendment of
regulation 12 – record-
keeping procedures

8. The principal Regulations are amended in regulation 12 as follows-

(a) in subregulation (1) by deleting the word “and” appearing at the end of paragraph (a) and inserting after paragraph (a) the following paragraph-

“(aa) a record comprising any relevant account files and business correspondence; and”;

(b) in subregulation (2) by deleting the word “and” appearing at the end of paragraph (a) and inserting after paragraph (a) the following paragraph-

“(aa) in relation to such records as are described in subregulation (1)(aa), either the date on which the relevant business was completed within the meaning of subregulation (4) or the date on which all activities taking place in the course of the transaction in question were completed, as the case may be; and”;

(c) by repealing subregulation (4) and substituting the following subregulation -

“ (4) For the purposes of subregulation (2)(a) or (aa), the date on which relevant business is completed is -

- (a) in circumstances falling within Case 1, the date of the ending of the business relationship in respect of whose formation the record under subregulation (1)(a) or (aa) was compiled;
- (b) in circumstances falling within Case 2 or 3, the date of the completion of all activities taking place in the course of the one-off transaction in respect of which the record under subregulation (1)(a) or (aa) was compiled; or
- (c) in circumstances falling within Case 4, the date of the completion of all activities taking place in the course of the last one-off transaction in respect of which the record under subregulation (1)(a) or (aa) was compiled.”.

9. The principal Regulations are amended in regulation 14(c) by deleting the word “reasonable”.
10. The principal Regulations are amended in the Second Schedule by inserting after paragraph 17 the following paragraph-
- “18. The provision of registered office services to a private trust company by a company that holds a Trust licence under section 6(5)(c) of the Banks and Trust Companies Law (2007 Revision).”.

Amendment of regulation 14 – internal reporting procedures

Amendment of Second Schedule – list of activities falling within the definition of “relevant financial business”

Made in Cabinet the 23rd day of October, 2008.

CARMENA WATLER

Clerk of the Cabinet.