

VIRGIN ISLANDS

ANTI-MONEY LAUNDERING (AMENDMENT) REGULATIONS, 2015

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2015 NO. 74

**PROCEEDS OF CRIMINAL CONDUCT ACT, 1997
(No. 5 of 1997)**

Anti-Money Laundering (Amendment) Regulations, 2015

[Gazetted 22nd October, 2015]

The Cabinet, in exercise of the powers conferred by section 41 of the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997) and with the advice of the Financial Services Commission, makes these Regulations:

Citation and commencement

1. These Regulations may be cited as the Anti-money Laundering (Amendment) Regulations, 2015 and shall come into force on a date that the Minister may, by Notice published in the Gazette, appoint.

Regulation 2 amended

2. Regulation 2 of the Anti-money Laundering Regulations, 2008 (hereinafter referred to as “the principal Regulations”) is amended in sub-regulation (1) –

(a) by inserting in their appropriate alphabetical order, the following new definitions –

““beneficial owner” means the natural person who ultimately owns or controls an applicant for business or a customer or on whose behalf a transaction or activity is being conducted and includes, though not restricted to –

(a) in the case of a legal person other than a company whose securities are listed on a recognised stock exchange, a natural person who ultimately owns or controls, whether directly or indirectly, ten or more per cent of the shares or voting rights in the legal person;

(b) in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person; and

(c) in the case of a legal arrangement –

(i) the partner or partners who control the partnership;

(ii) the trustee or other person who controls the applicant for business or customer; or

(iii) the settlor or other person by whom the legal arrangement is made;

“customer” means a party that has entered into a business relationship or one-off transaction with a relevant person;

“customer due diligence” refers to the steps required to be taken by a relevant person in his dealings with an applicant for business or a customer in relation to a business relationship or one-off transaction in order to forestall and prevent money laundering and other financial crimes;”;

(b) by deleting the definition of “foreign regulatory authority” and substituting the following definition –

““foreign regulatory authority” means an authority in a jurisdiction outside the Virgin Islands which exercises in that jurisdiction regulatory, supervisory or monitoring functions that substantially correspond to the regulatory, supervisory or monitoring functions of the Agency or Commission;”;

(c) in the definition of “foreign regulated person” –

(i) by deleting from paragraph (c) (i), the words “CFATF Recommendations or”; and

(ii) by deleting from paragraph (c) (ii), the word “supervised” and substituting the words “regulated, supervised or monitored”.

Regulation 6 amended

3. Regulation 6 of the principal Regulations is amended

(a) by deleting sub-regulation (1) and substituting the following sub-regulation –

“(1) Where a person carrying on relevant business assesses an applicant for business to be of low risk and verifies that the applicant for business is –

(a) a regulated person,

(b) a foreign regulated person, or

(c) a legal practitioner, notary public or an accountant who belongs to a professional body whose rules of conduct or practice embody legal requirements for the detection and prevention of money laundering that are consistent with the requirements of the FATF

Recommendations and the legal practitioner, notary public or accountant is regulated, supervised or monitored by his or her professional body for compliance with those requirements,

the person carrying on relevant business is not required to obtain and verify the identity of the applicant for business.”;

(b) by deleting sub-regulation (2) and substituting the following sub-regulation –

“(2) Sub-regulation (1) does not apply where the person handling the transaction on behalf of the person carrying on relevant business to whom the application for business is made –

(a) knows or suspects that the applicant is engaged in money laundering or other activity which presents a high risk; or

(b) has reasonable grounds to doubt the veracity or adequacy of previously obtained customer due diligence information in respect of the applicant for business.”.

Regulation 7 revoked and substituted

4. Regulation 7 of the principal Regulations is revoked and substituted with the following regulation –

“Reliance on third parties

7. (1) Subject to this regulation and regulations 7A and 7B, a relevant person may rely on introduction of an applicant for business by a third party if the relevant person is satisfied that the third party has taken measures to –

(a) obtain and verify the identity of the applicant for business using reliable, independent source documents, data or information;

(b) obtain and verify the identity of the beneficial owner of the applicant for business, such that the relevant person is satisfied that it (the relevant person) knows who the beneficial owner is;

(c) understand, where the applicant for business is a body corporate, the ownership and control structure of the body corporate; and

(d) understand and, where appropriate, obtain information on the purpose and intended nature of the business relationship.

(2) Where a relevant person relies on the introduction of an applicant for business by a third party, the relevant person shall –

(a) satisfy itself that the third party is –

(i) a regulated person;

(ii) a foreign regulated person; or

(iii) a member of a professional body –

(aa) whose rules of conduct or practice embody legal requirements for the detection and prevention of money laundering consistent with the FATF Recommendations generally; and

(bb) who, in relation to customer due diligence and record keeping procedures specifically, is regulated, supervised or monitored by that body for compliance with those requirements;

(b) immediately upon the introduction, obtain from the third party the information or data required under sub-regulation (1), but this does not require the relevant person to obtain at the same time from the third party a copy of any document or a record of the information or data referred to in that sub-regulation;

(c) take adequate steps to ensure that copies of all identification and verification data and other relevant documentation held or maintained by the third party will be made available by the third party upon request without delay;

(d) ensure that the third party has in place procedures to establish and maintain identification of applicants for business and update identification information based on the risk profile of the applicants for business.

(3) Where a relevant person wishes to rely on an introduction by a third party from a country or territory that is listed in Schedule 2 of the Code, it shall nevertheless have regard to information that is available on the level of the country's or territory's risk.

(4) A relevant person shall not rely on an introduction by a third party in circumstances where the third party is relying on another third party or other

third parties to conduct and maintain information on the customer due diligence of an applicant for business (multi-level or tiered introduction).

(5) Subject to sub-regulation (7), identification procedures established and maintained pursuant to sub-regulation (2) (d) and the obligation outlined in sub-regulation (3) shall not apply where the relevant person and the third party are part of the same group and that group –

(a) applies at the group level customer due diligence and record keeping requirements and programmes against money laundering that are at least equivalent to those specified in these Regulations and the Code; and

(b) is regulated, supervised or monitored for compliance with those requirements and programmes by a foreign regulated authority or other equivalent body with responsibility for regulating, supervising or monitoring compliance with such requirements and programmes.

(6) In sub-regulation (5), the term “group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company, and “holding company” and “subsidiary” shall be construed in accordance with section 2 (2) to (6) of the Banks and Trusts Companies Act, 1990.

(7) Notwithstanding anything contained in this regulation, the relevant person has the ultimate responsibility for ensuring that it has obtained and verified the identity of an applicant for business and that it knows the beneficial owner of the applicant for business.

(8) For purposes of sub-regulation (2) (b) with respect to business relationships between a relevant person and a third party that were in existence before the coming into force of these Regulations, the transitional provisions outlined in the Schedule shall apply.”.

Regulations 7A and 7B inserted

5. The principal Regulations are amended by inserting after regulation 7, the following new regulations –

“Third party business relationship agreement

7A. (1) A relevant person shall, before entering into a business relationship with a third party in respect of the introduction and acceptance of applicants for business, enter into a written agreement with the third party to comply with the requirements of regulation 7 (1) and (2) and the conditions stipulated in the Code.

(2) The written agreement shall be valid in respect of every applicant for business that is introduced by the third party and with whom the relevant person has developed a business relationship, and the period of validity of the agreement shall –

- (a) extend to at least five years or for the duration of the business relationship, whichever is longer; and
- (b) remain valid for a period of at least five years from the date of termination of the business relationship between the relevant person and the applicant for business.

(3) Sub-regulation (2) does not apply where the written agreement between the relevant person and the third party has been terminated, but –

- (a) the obligations contained in the agreement, including the customer due diligence information maintained by the third party, are transferred to another third party who has –
 - (i) agreed to be bound by the written agreement in relation to the relevant person; or
 - (ii) entered into another written agreement with the relevant person comprising at least the same obligations contained in the agreement; or
- (b) all the customer due diligence information maintained by the third party has been transferred to the relevant person to maintain.

(4) The Agency, Commission or any other competent authority in the Virgin Islands may request a copy of any written agreement entered into by a relevant person pursuant to this regulation and the relevant person shall comply with that request.

(5) Upon the date of the coming into force of these Regulations, a relevant person shall, in relation to every customer, modify any existing agreement, or enter into a new agreement, with a third party to ensure compliance with the requirements of this regulation.”.

Obligation to test business relationship

7B. (1) Subject to sub-regulation (2), the relevant person shall test its business relationship with the third party by carrying out a periodic review of the customer due diligence measures of the third party to satisfy itself that –

- (a) the requirements of regulation 7 (1) are being complied with; and
- (b) the terms and conditions of the written agreement entered into pursuant to regulation 7A are being adhered to.

(2) The periodic review referred to in sub-regulation (1) shall be carried out in accordance with the provisions of the Code.”.

Regulation 17 amended

6. Section 17 of the principal Regulations is amended –

(a) in subsection (1) by deleting the words “fails to comply with the requirements” and substituting the words “contravenes any provision”; and

(b) by adding after sub-regulation (6), the following new sub-regulations –

“(7)A person who contravenes any provision of these Regulations may be proceeded against under section 56 of the Financial Services Commission Act instead of under this regulation.

(8) The imposition of a penalty under or pursuant to this regulation does not absolve the person penalized from complying with the provision of these Regulations that he or she has contravened.”.

Schedule added

7. The principal Regulations are amended by adding after regulation 18 the following new Schedule –

“SCHEDULE

(Regulation 7 (8))

TRANSITIONAL PROVISIONS

Application

1. These transitional provisions apply to every relevant person who, at the date of the coming into force of these Regulations, has a business relationship with an applicant for business or a customer who had been the subject of an introduction to the relevant person by a third party.

Compliance with regulation 7 (1)

2. Every relevant person shall, upon the coming into force of these Regulations, take adequate measures to obtain from the third party, with respect to each applicant for business or customer with whom the relevant person has a business relationship, the information outlined in regulation 7 (1).

Period for compliance

3. (1) Subject to any extension of time under paragraph 4, the requirement outlined in paragraph 2 must be complied with on or before 31st December, 2016 (“the compliance date”).

(2) For purposes of establishing whether or not relevant persons are complying with the requirement of paragraph 2, the Commission may, before the compliance date and within such period as the Commission may determine –

(a) require relevant persons to prepare and submit returns, in such form as the Commission may approve, outlining their level of compliance with the requirement of paragraph 2; and

(b) make inquiries and conduct such investigations as it considers appropriate to establish whether and to what extent relevant persons are carrying out the requirement of paragraph 2.

(3) Subject to sub-paragraph (4), any inquiry or investigation to be carried out pursuant to sub-paragraph (2) (b) shall be carried out in such form and manner, including the conduct of an inspection, as the Commission may determine.

(4) Where the Commission intends to carry out an inspection of a relevant person for purposes of sub-paragraph (2) (b), it shall provide the relevant person at least seven days written notice of its intention.

Extension of compliance date

4. (1) Where, at any time prior to the compliance date referred to in paragraph 3 (1), the Commission (after making necessary inquiries and conducting necessary investigations under paragraph 3 (2)) forms the opinion that a relevant person has made sufficient progress in complying with the requirement of paragraph 2 but, having regard to the number of applicants for business or customers with which the relevant person has a business relationship, or such other factors as the Commission deems relevant, the relevant person may not be able to obtain the required information in respect of every applicant for business or customer by the compliance date, the Commission may grant the relevant person an extension of such period as the Commission considers would enable the relevant person to obtain the required information .

(2) For the purposes of sub-paragraph (1), a relevant person shall be considered to have made sufficient progress in complying with the requirement of paragraph 2 if it has been able to obtain the required information in respect of at least –

(a) fifty percent of its applicants for business or customers, if any inquiry or investigation of the relevant person was carried out within 7 months of the compliance date; or

(b) seventy-five percent of its applicants for business, if any inquiry or investigation of the relevant person was carried out within 10 months of the compliance date.

Consequence of non-compliance

5. If a relevant person fails to comply with the requirement of paragraph 2 by the compliance date or, if granted an extension under paragraph 4, within the period of extension, it is liable to be proceeded against under regulation 17.”.

Made by Cabinet this 22nd day of October, 2015.

(Sgd.) Sandra Ward,
Cabinet Secretary.