

VIRGIN ISLANDS
ANTI-MONEY LAUNDERING (AMENDMENT) REGULATIONS,
2022

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VIRGIN ISLANDS
STATUTORY INSTRUMENT 2022 NO. 77
PROCEEDS OF CRIMINAL CONDUCT ACT
(Revised Edition 2020)

Anti-money Laundering (Amendment) Regulations, 2022

[Gazetted 19th August, 2022]

The Cabinet, in exercise of the powers conferred by section 41 of the Proceeds of Criminal Conduct Act, Revised Edition 2020, and with the advice of the Financial Services Commission, makes these Regulations.

Citation and commencement

1. (1) These Regulations may be cited as the Anti-money Laundering (Amendment) Regulations, 2022.

(2) Subject to subregulation (3), these Regulations shall come into force on the 22nd day of August, 2022.

(3) The provisions of these Regulations that relate to providing virtual assets service shall come into force on the 1st day of December, 2022.

Regulation 2 amended

2. Regulation 2 of the Anti-money Laundering Regulations, Revised Edition 2020 (hereinafter referred to as “the principal Regulations”) is amended

(a) in subregulation (1)

(i) in the definition of “Agency” by deleting the words, “under section 3” and substituting the words, “under section 3(1)”;

(ii) in the definition of “customer due diligence”, by deleting the words, “in his dealings with an applicant for business” and substituting the words, “in its or his or her dealings with an applicant for business”;

(iii) in relation to the definition of “relevant business”

(aa) by revoking paragraph (b), and substituting the following paragraph

“(b)the business of providing category A or category B insurance business or acting as an insurance intermediary within the meaning of the Insurance Act, Revised Edition 2020;”;

(bb) in paragraph (e) (iv), by deleting the words, “as a trustee of a trust” and substituting the words, “as a trustee, protector or administrator of a trust or settlement”;

(cc) by revoking paragraph (h);

(dd) by revoking paragraph (l) and substituting the following paragraph

“(l) the business of gaming and betting within the meaning of the Virgin Islands Gaming and Betting Control Act, 2020, No. 14 of 2020 when a transaction involves accepting a cash payment of \$3,000 or more or the equivalent in any other currency;”;

(ee) by inserting after paragraph (l), the following new paragraphs

“(m) carrying on the business of a cooperative society registered under the Co-operative Societies Act, Cap. 267; and

(n) the business of carrying on or providing virtual assets service when a transaction involves virtual assets valued at \$1,000 or more;”;

(iv) by revoking the definition of “applicant for business” and substituting the following definition

““applicant for business” means the party intending to enter into a business relationship or one-off transaction with a relevant person;”;

(v) by revoking the definition of “beneficial owner” and substituting the following definition

““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 body corporate

(i) as it relates to a legal person that is not a company whose securities are listed on a recognised exchange, a natural person who ultimately owns or controls, whether directly or indirectly, 10% or more of the shares or voting rights in the legal person; and

(ii) as it relates to any body corporate, a natural person who otherwise exercises control over the management of the legal person; and

(b) in the case of a partnership

(i) a natural person who is ultimately entitled to or controls, whether directly or indirectly, 10% or more share of the capital or profits of

the partnership or 10% or more voting rights in the partnership; and

(ii) a person who otherwise exercises control over the management of the partnership;

(c) in the case of a trust

(i) any person, characteristic or class of persons entitled to a vested right in the trust; and

(ii) the trustee, the settlor, the protector (if any), or any other person who has control over the trust; and

(d) in the case of any other type of legal person or legal arrangement, the persons in equivalent or similar positions or who exercise similar controls to those detailed in paragraphs (a) to (c);”;

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

““Act” means the Proceeds of Criminal Conduct Act, Revised Edition 2020;

“control”, for the purpose of the definition of “beneficial owner”, means having an influence over the activities of an applicant for business or customer without any ownership interest, and includes

(a) having an influence through close family relationships, or historical or contractual associations; or

(b) using, enjoying or benefitting from the assets owned by the applicant for business or customer;

“money laundering” has the meaning ascribed to it under section 2 (1) of the Act and for the purposes of these Regulations a reference to money laundering includes

(a) “terrorist financing” as defined under section 2(1) of the Financial Investigation Agency Act, Revised Edition 2020; and

(b) “proliferation financing” as defined under section 6 of the Proliferation Financing (Prohibition) Act, 2021;

“virtual asset” means a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes, but does not include

(a) digital representations of fiat currencies and other assets or matters specified by enactment or guidelines; or

(b) a digital record of a credit against a financial institution of fiat currency, securities or other financial assets that can be transferred digitally;

“virtual assets service” means the business of engaging, on behalf of another person, in any VASP activity or operation (as outlined in the definition of “VASP”), and includes

- (a) hosting wallets or maintaining custody or control over another person’s virtual asset, wallet or private key;
- (b) providing financial services relating to the issuance, offer or sale of a virtual asset;
- (c) providing kiosks (such as automatic teller machines, bitcoin teller machines or vending machines) for the purpose of facilitating virtual assets activities through electronic terminals to enable the owner or operator of the kiosk to actively facilitate the exchange of virtual assets for fiat currency or other virtual assets; or
- (d) engaging in any other activity that, by enactment or guidelines, constitute the carrying on of the business of providing virtual asset service or issuing virtual assets or being involved in virtual asset activity;

“VASP”, for the purpose of the definition of “virtual assets service” means a virtual asset service provider who provides, as a business, one or more of the following activities or operations for or on behalf of another person

- (a) exchange between virtual assets and fiat currencies;
- (b) exchange between one or more forms of virtual assets;
- (c) transfer of virtual assets, where the transfer relates to conducting a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
- (d) safekeeping or administration of virtual assets or instruments enabling control over virtual assets;
- (e) participation in, and provision of, financial services related to an issuer’s offer or sale of a virtual asset;
- (f) perform such other activity or operation as may be specified by enactment;” and

(vii) by revoking the definition of “Steering Committee”; and

- (b) in subregulation (3), by deleting the words, “subsection (1)(k) and (l)” and substituting the words, “subsection (1)(k), (l) and (n)”.

Regulation 3 amended

3. Regulation 3(1) of the principal Regulations is amended

- (a) in subparagraph (b)(ii), by deleting the words “the Proceeds of Criminal Conduct Act” and substituting the words, “the Act”; and
- (b) by revoking subparagraph (c)(ii), and substituting the following subparagraph

“(ii)in dealing with customers where such transactions have been reported to the Agency in accordance with the provisions of the Act.”.

Regulation 4 amended

4. Regulation 4(2)(a) of the principal Regulations is amended, by deleting the words, “unless and to the extent that the Agency advises otherwise” and substituting the words, “unless otherwise permitted pursuant to section 23 of the Code”.

Regulation 6 amended

5. Regulation 6 of the principal Regulations is amended

- (a) by inserting before the words, “exceptions to” in the heading the words, “Simplified and”;
- (b) in subregulation (1), by deleting the words, “is not required to” in the closing paragraph, and substituting the words, “may apply simplified measures to”;
- (c) in subregulation (2)
 - (i) in the opening paragraph, by deleting the words, “the person handling the transaction on behalf of”;
 - (ii) in paragraph (a), by deleting the word “or” at the end of the paragraph;
 - (iii) in paragraph (b), by deleting the full-stop at the end of the paragraph and substituting the word “; or”; and
 - (iv) by inserting after paragraph (b), the following new paragraph
“(c) has made a determination of low risk that is not consistent with the money laundering risks identified by the Virgin Islands, including risk identified in any national risk assessment, or a risk assessment conducted by a competent authority, law enforcement agency or any other authority with responsibility relating to money laundering, in the Virgin Islands.”;
- (d) in subregulation (2A), by deleting the words, “normal or”; and
- (e) by revoking subregulation (3) and substituting the following subregulations
 - “(3) A person carrying on relevant business is, in relation to a one-off transaction, not required to obtain evidence of the identity of an applicant for business where the amount to be paid by or to the applicant for business
 - (a) is less than \$15,000 or the equivalent amount in another currency;
 - (b) is, in the case of gaming and betting, less than \$3,000 or the equivalent in any other currency; or

- (c) in the case of virtual assets service, the virtual assets are valued at less than \$1,000.
- (4) Subregulation (3) does not apply where
 - (a) the person carrying on the relevant business has reasonable grounds for believing (whether at the beginning or subsequently), that the transaction is linked to one or more other transactions, and the total amount to be paid by or to the applicant for business in respect of all the linked transactions is
 - (i) in the case of gaming and betting \$3,000 or more;
 - (ii) in the case of virtual assets service, valued at \$1,000 or more;
 - (iii) in all other cases, \$15,000 or more; or
 - (b) any person handling the transaction on behalf of the person carrying on relevant business knows or suspects that the transaction involves money laundering.”.

Regulation 7 amended

6. Regulation 7 of the principal Regulations is amended

- (a) in subregulation (1)(c), by inserting after the words, “control structure of the body corporate”, the words “, including beneficial ownership”;
- (b) by deleting subregulation (3) and substituting the following subregulation
 - “(3) Where a relevant person wishes to rely on an introduction by a third party, the relevant person shall have regard to information that is available on the level of risk in the country or territory where the third party is incorporated, registered or formed and operating.”; and
- (c) in subregulation (5)
 - (i) in paragraph (a), by deleting the word “and” at the end of the paragraph;
 - (ii) in paragraph (b), by deleting the full-stop at the end of the paragraph and substituting the word, “; and”; and
 - (iii) by inserting after paragraph (b), the following new paragraph
 - “(c) has anti-money laundering policies and procedures to adequately mitigate the risks posed by any higher risk country or territory.”.

Regulation 9 amended

7. Regulation 9 of the principal Regulations is amended

- (a) by designating the current regulation as subregulation (1); and
- (b) by inserting after subregulation (1) as redesignated, the following new subregulation

“(2) Subregulation (1) is without prejudice to compliance by a relevant person that is a legal person or legal arrangement with the requirement to maintain records and underlying documentation within the meanings of the BVI Business Companies Act, Revised Edition 2020 and Mutual Legal Assistance (Tax Matters) Act, Revised Edition 2020.”

Regulation 10 amended

8. Regulation 10 of the principal Regulations is amended

- (a) in subregulation (1) (b), by deleting the words, “formally ended” and substituting the word, “terminated”; and
- (b) in subregulation (2), by deleting the words, “Anti-money Laundering Reporting Officer” and substituting the words, “Money Laundering Reporting Officer”.

Regulation 13 amended

9. Regulation 13 of the principal Regulations is amended

- (a) by revoking subregulation (1B) and substituting the following subregulation

“(1B) A relevant person shall, within 14 days of appointing a Money Laundering Reporting Officer (including every new appointment of a Money Laundering Reporting Officer)

- (a) in the case of a relevant person regulated by the Commission, notify the Commission in writing of that fact specifying the date of his or her appointment; and
 - (b) in any other case, notify the Agency in writing of that fact specifying the date of his or her appointment.”;
- (b) in subregulation (1C)
 - (i) in paragraph (b)
 - (aa) by deleting the words, “who is resident in the Virgin Islands and”; and
 - (bb) by deleting the word, “; or” at the end of the paragraph and substituting a full-stop; and
 - (ii) by deleting paragraph (c);
 - (c) in subregulation (2), by deleting the words, “and terrorist financing” wherever they appear; and
 - (d) in subregulations (3) and (4),

- (i) by deleting the words, “the Proceeds of Criminal Conduct Act” wherever they appear and substituting the words, “the Act”; and
- (ii) by deleting the words, “and terrorist financing” wherever they appear.

Regulation 14 amended

10. Regulation 14 (1) of the principal Regulations is amended by deleting the words, “the Proceeds of Criminal Conduct Act” and substituting the words, “the Act”.

Regulation 16 amended

11. Regulation 16 of the principal Regulations is amended

- (a) in subregulation (1)
 - (i) in paragraph (a)
 - (aa) by deleting the words, “the Proceeds of Criminal Conduct Act” and substituting the words, “the Act”; and
 - (bb) by deleting the words, “and terrorist financing”; and
- (b) in subregulation (2)(ii), by deleting the words “and terrorist financing”.

Regulation 17 amended

12. Regulation 17 of the principal Regulations is amended

- (a) by deleting subregulation (2), and substituting the following subregulation
 - “(2)A person who commits an offence under subregulation (1) is liable on conviction to a fine not exceeding \$150,000.”; and
- (b) by revoking subregulation (7).

Made by Cabinet this 19th day of August, 2022.

(Sgd.) Sandra Ward,
Cabinet Secretary.