

ANTI-MONEY LAUNDERING REGULATIONS

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ANTI-MONEY LAUNDERING REGULATIONS – SECTION 41

(S.I.s 12/2008, 20/2010, 36/2012, 74/2015, 19/2018 and 86/2019)

Commencement

[22 February 2008]

Short title

1. These Regulations may be cited as the Anti-money Laundering Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

“Agency” means the Financial Investigation Agency established under section 3 of the Financial Investigation Agency Act;

“applicant for business” means the party proposing to a relevant person in the Virgin Islands that they enter into a business relationship or one-off transaction;
(Substituted by S.I. 20/2010)

“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;
(Inserted by S.I. 74/2015)

“business relationship” means an arrangement between a relevant person and one or more parties, where—

- (a) the relevant person has obtained satisfactory evidence of identity of the party who, in relation to the formation of that business relationship, was the applicant for business;
- (b) the relevant person engages in business with the other party on a frequent, habitual or regular basis; and
- (c) the monetary value of dealings in the course of the arrangement is not known or capable of being known at entry;

“CFATF” means the Caribbean Financial Action Task Force of which the Virgin Islands is a member;

“cash” includes coins and any type of bearer negotiable or other monetary instrument and any postal orders;

“Code” means the Anti-money Laundering and Terrorist Financing Code of Practice;

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;

“customer” means a party that has entered into a business relationship or one-off transaction with a relevant person; *(Inserted by S.I. 74/2015)*

“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; *(Inserted by S.I. 74/2015)*

“FATF” means the Financial Action Task Force; *(Inserted by S.I. 20/2010)*

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; *(Substituted by S.I. 74/2015)*

“foreign regulated person” means a person that—

- (a) is incorporated, registered, licensed or formed, or if it is not a body corporate, has its principal place of business, in a jurisdiction outside the Virgin Islands;
 - (b) carries on business outside the Virgin Islands that, if carried on within the Virgin Islands, would fall within a category of business specified in paragraphs (a) to (e) of the definition of “relevant business”; and
 - (c) in respect of the business referred to in paragraph (b)—
 - (i) is subject to legal requirements in its jurisdiction for the detection and prevention of money laundering that are consistent with the requirements of the FATF Recommendations in relation to that business; and
 - (ii) is properly and adequately regulated, supervised or monitored for compliance with those legal requirements by a foreign regulatory authority;
- (Amended by S.I. 74/2015)*

“Money Laundering Reporting Officer” means the person appointed under regulation 13(1) by a relevant person;

“one-off transaction” means a transaction that constitutes relevant business and which is carried out other than in the course of an established business relationship;

“regulated person” means a person who is licensed or registered to carry on a relevant business in or from within the Virgin Islands; *(Amended by S.I. 20/2010)*

“relevant business” means—

- (a) banking business or trust business within the meaning of the Banks and Trust Companies Act;
- (b) insurance business within the meaning of the Insurance Act;
- (c) the business of company management within the meaning of the Company Management Act;

- (d) investment business or business as a mutual fund or a private investment fund within the meaning of the Securities and Investment Business Act, 2010; (*Substituted by S.I. 19/2018 and amended by S.I. 86/2019*)
- (e) without prejudice to paragraphs (a) and (c), the business of acting as a trust or company service provider for the purpose of providing any of the following services to a third party—
 - (i) acting as a formation agent of legal persons;
 - (ii) acting (or arranging for another person to act) as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, partnership or any other legal person or arrangement;
 - (iv) acting (or arranging for another person to act) as a trustee of a trust;
 - (v) acting (or arranging for another person to act) as a nominee shareholder for another person;
- (f) the business of providing remittance service of Telegraphic Money Order under the Post Office (Telegraph Money Order) Rules, 1934 or money order under the Post Office Rules, 1976;
- (g) financing business or money services business within the meaning of the Financing and Money Services Act, 2009; (*Substituted by S.I. 19/2018*)
- (h) the business of—
 - (i) providing advice on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of undertakings;
 - (ii) money broking;
 - (iii) the safe keeping and administration of securities; or
 - (iv) lending or financial leasing;
- (i) the provision of services to clients by legal practitioners, notaries public or accountants which involve transactions concerning any of the following activities—
 - (i) buying and selling of real estate;
 - (ii) managing of client money, securities or other assets;
 - (iii) management of bank, savings or securities accounts;
 - (iv) organization of contributions for the creation, operation or management of companies; and
 - (v) creation, operation or management of legal persons or arrangements, or buying and selling of business entities;
- (j) the business of acting as a real estate agent when engaged in a transaction for a client concerning the buying and selling of real estate;

- (k) the business of dealing in precious metals or precious stones when such transaction involves accepting a cash payment of \$15,000 or more or the equivalent in any other currency;
- (l) the business of operating a casino (where permitted by law) when a transaction involves accepting a cash payment of \$3,000 or more or the equivalent in any other currency;

“relevant person” means a person carrying on relevant business; and

“Steering Committee” means the Steering Committee of the Financial Investigation Agency established under section 3(3) of the Financial Investigation Agency Act, 2003.

(2) Subsection (1)(i) does not apply to legal practitioners, notaries public or accountants who are employed by the Government or any statutory body.

(3) For the purposes of subsection (1)(k) and (l), a transaction of or above the threshold designated in that subsection shall be construed to include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

(4) For the purposes of these Regulations—

- (a) a business relationship formed by a relevant person is an established business relationship where that person has obtained satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;
- (b) the question as to what constitutes satisfactory evidence of identity shall be determined in accordance with the provisions of the Code;
- (c) a staff is a key staff if he or she is an employee of a relevant person who deals with customers or clients and their transactions. (*Substituted by S.I. 20/2010*)

General requirements

3. (1) In conducting relevant business, a relevant person shall not form a business relationship or carry out a one-off transaction with or for another person unless the relevant person—

- (a) maintains—
 - (i) identification procedures in accordance with regulations 4, 5 and 7;
 - (ii) record keeping procedures in accordance with regulations 8 to 11;
 - (iii) internal reporting procedures in accordance with regulation 15; and
 - (iv) internal controls and communication procedures which are appropriate for the purposes of forestalling and preventing money laundering;
- (b) takes appropriate measures from time to time for the purpose of making employees aware of—
 - (i) the procedures maintained under paragraph (a) and any related procedures provided in the Code; and

- (ii) the provisions of the Proceeds of Criminal Conduct Act, the Code, these Regulations and any directive issued pursuant to any enactment; and
- (c) provides training for employees to assist them—
 - (i) in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering; and
 - (ii) in dealing with customers where such transactions have been reported to the Steering Committee or the Agency in accordance with the provisions of the Proceeds of Criminal Conduct Act.
- (2) The procedures, measures and training requirements outlined in subregulation (1) shall be construed to include any similar or additional procedures, measures and training requirements provided under the Code.
- (3) Identification procedures, record keeping procedures, internal reporting procedures and internal controls and communication procedures required to be maintained under subregulation (1)(a) shall be submitted—
 - (a) in the case of a relevant person that is regulated by the Commission, for the approval of the Commission; and
 - (b) in the case of a relevant person that is not regulated by the Commission, for the approval of the Agency.
(Substituted by S.I. 19/2018)
- (4) The Commission or the Agency may keep, for its own use, copies of documents submitted under sub-regulation (3). *(Inserted by S.I. 19/2018)*

Identification procedures in relation to new and continuing business relationships

4. (1) A relevant person shall establish and maintain identification procedures which, as soon as reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction require—
- (a) the production by the applicant for business, satisfactory evidence of his or her identity; or
 - (b) the taking by the relevant person of such measures as are specified in the identification procedures as will produce satisfactory evidence of the identity of the applicant for business.
- (2) The identification procedures established pursuant to subregulation (1) shall also—
- (a) require that where satisfactory evidence of identity is not obtained by the relevant person, the business relationship or one-off transaction shall not proceed any further until such evidence is obtained, unless and to the extent that the Agency advises otherwise;
 - (b) require that where the business relationship or one-off transaction subsists, the applicant for business appears to be acting for a third party in respect of that business relationship, the satisfactory evidence of the identity of the third party will be obtained, failing which the business relationship will be terminated;

- (c) include the full name (including any other names and aliases) and physical address of the applicant for business and, where he or she is acting for a third party, the full name (including any other names and aliases) and physical address of the third party;
- (d) provide for the assessment by the relevant person of the risk that any business relationship or one-off transaction may involve money laundering and shall be appropriate to the circumstances, having regard to the degree of risk assessed; and
- (e) take into account, without limiting paragraph (d), the greater risk of money laundering which arises when the applicant for business is not engaged in a face-to-face relationship or transaction as to be identified.

(3) For the purposes of this regulation, but without prejudice to regulation 2(4)(b), satisfactory evidence of identity is evidence which is reasonably capable of establishing, and to the satisfaction of the person who obtains the evidence, does establish, that the applicant for business is the person he or she claims to be.

Establishing and maintaining verification procedures

5. (1) A relevant person shall establish and maintain procedures which, in respect of transactions undertaken after a business relationship has been established in compliance with regulation 4, require—

- (a) the satisfactory verification of evidence of identity produced pursuant to regulation 4(1)(a); or
- (b) the taking of such measures as are specified in the procedures as will produce satisfactory verification of evidence of identity produced under regulation 4(1)(b),

as soon as reasonably practicable after transactions are undertaken.

(2) The procedures established pursuant to subregulation (1) shall also require that when satisfactory verification of evidence of identity is not obtained or produced, the business relationship and transactions shall not proceed any further.

(3) The provisions of the Code with respect to the verification of evidence of identity shall apply for the purposes of these Regulations.

Exceptions to identification procedures

6. (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.

(Substituted by S.I. 74/2015)

(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.

(Substituted by S.I. 74/2015)

(2A) In assessing whether an applicant for business is of normal or low risk for the purposes of subregulation (1), the person carrying on relevant business shall have regard to the provisions of the Code. *(Inserted by S.I. 20/2010)*

(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 is less than \$10,000 or the equivalent amount in another currency, unless—

- (a) the person carrying on the relevant business has reasonable grounds for believing (whether at the beginning or subsequently), that—
 - (i) the transaction is linked to one or more other transactions; and
 - (ii) the total amount to be paid by or to the applicant for business in respect of all the linked transactions is \$10,000 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.

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.

(Substituted by S.I. 74/2015)

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.

(Inserted by S.I. 74/2015)

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.

(Inserted by S.I. 74/2015)

Establishing and maintaining record of verification of identity

8. Where a relevant person is required under these Regulations to verify the identity of a person, the relevant person shall establish and maintain a record in the Virgin Islands which—

- (a) indicates the nature of the evidence obtained; and
- (b) comprises a copy of the evidence or, where this is not reasonably practicable, contains such information as would enable a copy of the evidence to be obtained.

Maintaining record of transactions and reports

9. Where a relevant person is required under these Regulations to verify the identity of a person, the relevant person shall maintain a record of—

- (a) all transactions carried out by or on behalf of that person (such as records sufficient to identify the source and recipient of payments from which investigating authorities will be able to compile an audit trail for suspected money laundering); and
- (b) all reports made by it to the Agency and all inquiries relating to money laundering received by it from the Agency.

Limitation period for retention of records

10. (1) A relevant person shall maintain the records required under regulations 7, 8 and 9 for a period of at least 5 years from the date—

- (a) when all transactions relating to a one-off transaction or a series of linked transactions were completed; or
- (b) when the business relationship was formally ended.

(Amended by S.I. 20/2010)

(2) Where a report has been made to the Anti-money Laundering Reporting Officer appointed under regulation 13 or the relevant person knows or believes that a matter is under investigation, that person shall, without prejudice to subregulation (1) or the requirements of the Code relating to the retention of records, retain all relevant records for as long as may be required by the Agency.

(3) For the purposes of this regulation, the question as to what records may be relevant in the investigation process may be determined in accordance with the provisions of the Code.

Format and retrieval of records

11. (1) A relevant person shall ensure that any records required to be maintained pursuant to these Regulations are capable of retrieval without undue delay and in the manner provided in the Code.

(2) A relevant person may rely on the records of a third party in respect of the details of payments and transactions by customers, provided that it is satisfied that the third party is willing and able to retain and, if asked, to produce in the manner provided in the Code, copies of the records required.

Maintaining register of money laundering reports and inquiries

12. (1) A relevant person shall maintain a register of—

- (a) all reports made by it to the Agency; and
- (b) all inquiries relating to money laundering made of it by the Agency.

(2) The register maintained pursuant to subregulation (1) shall be kept separate from other records and shall contain as a minimum—

- (a) the date and nature of the report or inquiry;
- (b) the name and agency of the inquiring officer;
- (c) the powers being exercised and pursuant to what authority; and
- (d) details of the accounts or transactions involved.

Duty to appoint Money Laundering Reporting Officer

13. (1) A relevant person shall appoint a Money Laundering Reporting Officer who shall, in addition to the qualifications set out in subregulation (2), be of sufficient seniority to perform the functions reposed on a Money Laundering Reporting Officer under the Code and these Regulations. *(Amended by S.I. 20/2010)*

(1A) A person who is appointed as a Money Laundering Reporting Officer shall—

- (a) be a natural person; and
- (b) have access to all relevant information and material of the relevant person to enable him or her to perform the functions reposed in him or her under the Code and these Regulations.

(Inserted by S.I. 20/2010)

(1B) A relevant person shall, within 14 days of appointing a Money Laundering Reporting Officer, notify the Agency and the Commission in writing of that fact specifying the date of his or her appointment, and this requirement shall apply in every new appointment of a Money Laundering Reporting Officer. *(Inserted by S.I. 20/2010)*

(1C) The appointment of a Money Laundering Reporting Officer under subregulation (1) may relate to an individual who—

- (a) is an employee of the relevant person;
- (b) is not an employee of the relevant person, but who is resident in the Virgin Islands and meets the requirements of this regulation to perform the functions of a Money Laundering Reporting Officer; or
- (c) may or may not be an employee of the relevant person, but who meets the requirements of this regulation and is resident in a jurisdiction that is recognised pursuant to the provisions of the Code.

(Inserted by S.I. 20/2010)

(2) In order to be appointed as a Money Laundering Reporting Officer, a person shall possess the following qualifications—

- (a) he or she must at the minimum hold a diploma with a post qualification experience of not less than 3 years;
 - (b) he or she must be fit and proper;
 - (c) he or she must have a broad knowledge of anti-money laundering and terrorist financing matters, including the relevant regional and international treaties (including United Nations Resolutions) relating to the combating of money laundering and terrorist financing;
 - (d) he or she must have a good appreciation and understanding of Virgin Islands laws relating to money laundering and terrorist financing; and
 - (e) he or she must possess the ability to make independent and analytical decisions and not be easily susceptible to undue influence.
- (3) A Money Laundering Reporting Officer shall be responsible for ensuring compliance by staff of the relevant person with—
- (a) the provisions of these Regulations, Proceeds of Criminal Conduct Act, the Code and any other enactment relating to money laundering and terrorist financing;
 - (b) the provisions of any internal reporting and manual of compliance procedures relating to money laundering and terrorist financing; and
 - (c) any additional reporting and related obligations provided in the Code.
- (4) The Money Laundering Reporting Officer shall, in addition to the functions reposed in him or her by these Regulations and the Code, act as the liaison between the relevant person and the Agency in matters relating to compliance with the provisions of these Regulations, the Proceeds of Criminal Conduct Act, the Code and any other enactment relating to money laundering and terrorist financing.

Due diligence audit

14. (1) Without prejudice to regulation 13 or any other enactment relating to the conduct of inspections to verify compliance, the Agency or a person designated by the Agency in writing may conduct an inspection of a relevant person to determine compliance by that person with the requirements of these Regulations, Proceeds of Criminal Conduct Act, the Code and any other enactment or directive relating to money laundering.

(2) The Agency may, for purposes of these Regulations and the Code, issue such directives as it considers necessary and the directives, when issued, shall, unless considered by the Agency to be of a restricted and confidential nature, be published in the *Gazette*.

Establishment of procedures in relation to suspicious transactions

15. A relevant person shall establish written internal reporting procedures which, in relation to its relevant business, will—

- (a) enable its directors, or as the case may be, partners, all other persons involved in its management, and all key staff, to know to whom they should report knowledge or suspicion of money laundering;
- (b) ensure that there is a clear reporting chain under which suspicions of money laundering will be passed to the Money Laundering Reporting Officer;

- (c) ensure that the Money Laundering Reporting Officer has reasonable access to all relevant information which may be of assistance to him or her and which is available to the relevant person; and
- (d) ensure full compliance with the requirements of the Code.

Staff training

16. (1) A relevant person shall provide education and training for all of its directors or, as the case may be, partners, all other persons involved in its management, and all key staff, to ensure that they are aware of—

- (a) the provisions of these Regulations, Proceeds of Criminal Conduct Act, the Code and any other enactment relating to money laundering and terrorist financing;
- (b) the relevant regional and international conventions, United Nations Security Council Resolutions and standards of compliance established from time to time by the CFATF, FATF and other organizations of which the Virgin Islands is a member or in which the Virgin Islands holds associate or observer status, relating to money laundering and terrorist financing;
- (c) their personal and the relevant person's obligations under the enactments and instruments referred to in paragraphs (a) and (b);
- (d) the manual of compliance procedures or internal control systems and other requirements established pursuant to these Regulations and the Code;
- (e) their personal liability for failure to report information or suspicions in accordance with the requirements of these Regulations, the Code and any other enactment, including any established internal procedures.

(2) A relevant person shall, in addition, provide training—

- (a) to all of the persons referred to in subregulation (1) with respect to—
 - (i) ensuring compliance with regulation 3(1)(c);
 - (ii) its policies and procedures to detect and prevent money laundering and terrorist financing; and
 - (iii) its customer identification, record keeping and other procedures; and
- (b) in accordance with the requirements of this regulation and the Code to all new key staff as soon as practicable after their appointment.

(3) A relevant person shall provide the training requirements referred to in subregulations (1) and (2) on such frequent basis as it may determine, but in any case at least once every year.

Offences and penalties

17. (1) A person who contravenes any provision of these Regulations or any directive issued pursuant to regulation 14(2), commits an offence. (*Amended by S.I. 74/2015*)

(2) A person who commits an offence under subregulation (1) is liable—

- (a) on summary conviction, to a fine not exceeding \$100,000; and
(Amended by S.I.s 20/2010 and 36/2012)
- (b) on conviction on indictment, to a fine not exceeding \$150,000.
(Amended by S.I. 36/2012)

(3) In proceedings against a person for an offence under these Regulations, it shall be a defence for the person to prove that he or she took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations or any directive issued pursuant to regulation 14(2) in respect of which he or she is charged.

(4) Where an offence under these Regulations has been committed by a body corporate, section 22(2) of the Interpretation Act shall apply, except that the words “the liability of whose members is limited” shall be omitted.

(5) Where the affairs of a body corporate are managed by its members, subregulation (3) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(6) Where an offence under these Regulations is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to the failure to exercise due diligence by, a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he or she, as well as the partnership or association, commit that offence and is liable to be proceeded against and punished accordingly.

(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. (Inserted by S.I. 74/2015)

(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. (Inserted by S.I. 74/2015)

Revocation

18. The Anti-Money Laundering Code of Practice, 1999 is revoked. (Inserted by S.I. 20/2010)

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.

(Inserted by S.I. 74/2015)
