

TURKS AND CAICOS ISLANDS
PROCEEDS OF CRIME ORDINANCE
ANIT-MONEY LAUNDERING AND PREVENTION OF
TERRORIST FINANCING (AMENDMENT)
REGULATIONS 2021

(Legal Notice 134 of 2021)

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REGULATION

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MADE by the Acting Governor under section 177(2) of the Proceeds of Crime Ordinance.

Citation and commencement

1. These Regulations may be cited as the Anti-Money Laundering and Prevention of Terrorist Financing (Amendment) Regulations 2021 and shall come into operation on 25 October 2021.

Interpretation

2. In these Regulations “principal Regulations” means the Anti-Money Laundering and Prevention of Terrorist Financing Regulations.

Regulation 2 amended

3. The principal Regulations are amended in regulation 2 by inserting in their appropriate alphabetical positions the following definitions—

““Gaming Control Commission” means the Turks and Caicos Islands Gaming Control Commission established under section 4 of the Gaming Control Ordinance;

“gaming operator” has the meaning given in the Gaming Control Ordinance;

“legal arrangement” means a trust or partnership or other entity created between parties which lacks separate legal personality;

“money or value transfer service” means a financial business whose business involves the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the money or value transfer service provider belongs;

“realtor activities” means providing realtor services to both the purchaser and vendor of property

Regulation 3 substituted

4. The principal Regulations are amended by deleting regulation 3 and substituting the following regulation—

“Meaning of “beneficial owner”

3. “Beneficial owner” means the natural person who ultimately owns or controls the customer or the natural person on whose behalf a transaction or activity is being conducted and includes but is not restricted to—

- (a) in the case of a legal person, a natural person who ultimately owns or controls, whether through direct or indirect ownership or control, 10% or more of the shares or voting rights in the legal person;
- (b) in the case of a legal person, a natural person who otherwise exercises ultimate effective control over the management of the legal person; or
- (c) in the case of a legal arrangement, the trustee or other person who exercises ultimate effective control over the legal arrangement, whether alone or jointly with any other person or persons.

(2) For the purposes of subregulation (1), it is immaterial whether an individual’s ultimate ownership or control of a legal person, partnership or legal arrangement is direct or indirect.

(3) An individual is deemed not be the beneficial owner of a body corporate, the securities of which are listed on a recognised exchange.”.

Regulation 5 amended

5. Regulation 5 of the principal Regulations is amended—

- (a) in subregulation (2) by deleting paragraph (a) and substituting the following paragraph—
 - “(a) measures for verifying that a person purporting to act on behalf of a customer is properly authorised, and identify and verify the identity of the person;”;
- (b) by inserting after subregulation (2) the following subregulations—

“(2A) For customers that are legal persons, a financial business shall—

- (a) identify and verify the identity of the natural person, if any, who is the beneficial owner;
- (b) to the extent that there is doubt under paragraph (a) as to whether the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests, identify the natural person exercising control of the legal person or arrangement customer through other means; or
- (c) where no natural person is identified under (a) or (b), identify the relevant natural person who is the senior managing official.

(2B) For customers that are legal arrangements, a financial business, where applicable, shall identify and take reasonable measures to verify the identity of beneficial owners by means of the following information—

- (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership); or
- (b) for other types of legal arrangements, the identity of persons in equivalent or similar positions.”.

Regulation 11 amended

6. Regulation 11 of the principal Regulations is amended in subregulation (1) by deleting paragraph (c) and substituting the following paragraph—

- “(c) to existing customers on the basis of materiality and risk, and conduct due diligence on such existing relationships at appropriate times, taking into account whether and when customer due diligence measures have previously been undertaken and the adequacy of data obtained.”.

Regulation 15 amended

7. Regulation 15 of the principal Regulations is amended by repealing subregulation (1) and substituting the following subregulation—

“(1) A financial business is not required to apply customer due diligence measures before establishing a business relationship or carrying out an occasional transaction where—

- (a) the business has reasonable grounds for believing that the customer is—
 - (i) a regulated person; or
 - (ii) a foreign regulated person; or
 - (iii) a public authority in the Islands; or
 - (iv) a body corporate, the securities of which are listed on a recognised exchange; and
 - (v) which is assessed as low risk through a national risk assessment; or
- (b) in the case of life insurance business, the product is a life insurance contract where the annual premium is no more than \$500 or where a single premium of no more than \$2,000 is paid.”.

Regulation 23 amended

8. Regulation 23 of the principal Regulation is amended by deleting subregulation (2) and substituting the following subregulation—

“(2) The Gaming Control Commission is designated as the supervisory authority for gaming operators.”.

Regulation 27A inserted

9. The principal Regulations are amended by inserting after regulation 27 the following regulation—

“Fit and proper criteria - DNFBPs

27A. (1) In determining whether a person who carries on business as a DNFBP or a connected person is a fit and proper person, the DNFBP Supervisor shall have regard to—

- (a) the person’s probity, competence and soundness of judgement for fulfilling the responsibilities of the position;
- (b) the diligence with which the person is fulfilling or likely to fulfil the responsibilities; and
- (c) whether the interests of the DNFBP are, or are likely to be, in any way threatened by the person holding the position.

(2) Without prejudice to the generality of subregulation (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 discredit 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." FSC to review

Regulation 30A substituted

10. The principal Regulations are amended by deleting regulation 30A and substituting the following regulation—

“Adoption of legal and regulatory measure to prevent unsuitable persons from controlling financial business

30A. The relevant supervisory authority of a financial business or such other person as the relevant supervisory authority may deem fit shall adopt the necessary legal or regulatory measures to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a financial business or in the case of a casino, being an operator of the casino.”.


Schedule 2 amended

11. Schedule 2 to the principal Regulations is amended in paragraph (d) by inserting after subparagraph (ix) the following subparagraphs—

- “(x) money or value transfer services;

(xi) underwriting and placement of life insurance and other investment related insurance (insurance undertakings and insurance intermediaries (agents and brokers));”.

MADE this 19th day of October 2021.


ANYA WILLIAMS
ACTING GOVERNOR

