

TURKS AND CAICOS ISLANDS
PROCEEDS OF CRIME ORDINANCE
ANTI-MONEY LAUNDERING AND PREVENTION OF
TERRORIST FINANCING (AMENDMENT) REGULATIONS
2018

(Legal Notice 38 of 2018)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation and commencement
2. Interpretation
3. Regulation 2 amended
4. Regulation 10 amended
5. Regulation 11 amended
6. Regulation 12 amended
7. regulation 13 amended
8. Regulation 14 inserted
9. Regulation 15 amended
10. Regulation 17 amended
11. Regulation 18 amended
12. Regulation 19 amended
13. Regulation 22 amended
14. Regulation 26 amended
15. Regulation 29 amended
16. Regulation 30A inserted
17. Schedule 1 amended
18. Schedule 2 amended

PROCEEDS OF CRIME ORDINANCE
ANTI-MONEY LAUNDERING AND PREVENTION OF
TERRORIST FINANCING (AMENDMENT) REGULATIONS
2018

(Legal Notice 38 of 2018)

MADE by the Governor under section 177 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 2018 and shall come into operation on 15 August 2018.

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(1)—

(a) by deleting the definition of “high value dealer” and substituting the following—

““high value dealer” means a business—

(a) dealing in vehicles;

(b) pawning; or

(c) trading in goods, precious metals or precious stones, when it receives, in respect of any transaction, whether the transaction is executed in a single operation or in several linked operations, a payment or payments in cash or credit card, of—

(i) in the case of precious metals or precious stones, at least \$15,000, or the equivalent in another currency; or

(ii) in the case of goods or services of any description, at least \$15,000, or the equivalent in another currency.”;

(b) by deleting the definitions of “FATF Recommendations” and “financial business” and substituting the following—

“FATF Recommendations means—

(a) the Forty Recommendations; and

- (b) the Nine Special Recommendations, the international standard for tackling money laundering, terrorist financing and the financing of proliferation issued by the FATF, incorporating the amendments made on 22 October 2004 February, 2012 and such other amendments as may from time-to-time be made;

“financial business” means a natural person, body corporate, trust, partnership or unincorporated association specified in Schedule 2”; and

- (c) by inserting in the correct alphabetic position the following definition—

““Financial Intelligence Agency” means the Agency established under the Financial Intelligence Agency Ordinance;”.

Regulation 10 amended

4. The principal Regulations are amended in regulation 10(2) by inserting after the words “FATF Recommendations” the words “or there is call to apply countermeasures by the FATF, UN or EU”.

Regulation 11 amended

5. The principal Regulations are amended in regulation 11—

- (a) in subregulation (5) by inserting after paragraph (a) the following—

“(aa) the money laundering or terrorist financing risks are effectively managed;”;

- (b) by inserting after subregulation (6) the following—

“(6A) A financial business shall adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

(6B)A financial business shall determine if there exists any beneficial owner of the beneficiary at the time of pay-out and identify the beneficial owner of the beneficiary at the time of pay-out.”.

Regulation 12 amended

6. The principal Regulations are amended in regulation 12(6)(a) by deleting the words “the Anti-Money Laundering Committee” and substituting the words “the Financial Intelligence Agency”.

Regulation 13 amended

7. The principal Regulations are amended in regulation 13—

- (a) in subregulation (2)—

- (i) by inserting after the word “monitoring” the words “the business relationships and transactions with natural and legal person”;

- (ii) in paragraph (b) by inserting after the words “FATF recommendations” the words “or from countries for which there is call to apply enhanced or countermeasures by the FATF, UN or EU”;

(b) inserting after subregulation (2) the following—

“(2A) In relation to insurance business, where a person carrying out relevant financial business determines that carrying out relevant financial business with a beneficiary presents a higher risk, the person shall perform enhanced customer due diligence including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, where applicable, at the time of pay-out.

(2B) A financial business shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced due diligence measures are applicable.”.

Regulation 14 amended

8. The principal Regulations are amended in regulation 14—

(a) in subregulation (2)—

- (i) by deleting the “and” at the end of paragraph (c);
- (ii) by deleting the full stop at the end of paragraph (d) and substituting “; and”;
- (iii) by inserting after paragraph (d) the following—

“(e) the intermediary understands and obtained information on the purpose and intended nature of the business relationship;”.

(b) by inserting after subregulation (2) the following—

“(2A) A financial business shall—

- (a) consider whether an introducer or intermediary is regulated and supervised or monitored and has measures in place for compliance with customer due diligence and record keeping requirements; and
- (b) take into consideration the level of risk of countries in which the introducer or intermediary financial business is located.”.

Regulation 15 amended

9. The principal Regulations are amended in regulation 15—

(a) in subregulation (1)(a)—

- (i) by deleting the “or” at the end of subparagraph (iii);
- (ii) by inserting after subparagraph (iv) the following—

“(v) from a sector which is assessed as low risk through a national risk assessment; or”.

(b) in subregulation (3) by inserting after the words “FATF recommendations” the words “or from countries for which there is call to apply enhanced or countermeasures by the FATF, UN or EU”.

Regulation 17 amended

10. The principal Regulations are amended in regulation 17(2)(c) by deleting subparagraph (ii) and substituting the following—

“(ii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country that does not apply, or insufficiently applies, the FATF Recommendations or is from countries for which there is call to apply enhanced or countermeasures by the FATF, UN or EU ; or”

Regulation 18 amended

11. The principal Regulations are amended in regulation 19 by inserting after subregulation (1) the following—

“(1A) A financial business shall ensure that —

- (a) if the records are in the form of hard copies kept outside the Islands, that the copies can be sent to the Islands and made available within seven working days;
- (b) if the records are not in the form of hard copies (such as records kept on a computer system), that they are readily accessible in or from the Islands and that they are capable of retrieval without undue delay.

(1B) A financial business may relay on the records of a third party in respect of the details of payments and transactions by customers if it is satisfied that the third party will—

- (a) produce copies of the records on request; and
- (b) notify the financial business if the third party is no longer able to produce copies of the record on request.”.

Regulation 19 amended

12. The principal Regulations are amended in regulation 19(2) by deleting the words “the Anti-Money Laundering Committee” and substituting “the Financial Intelligence Agency”.

Regulation 22 amended

13. The principal Regulations are amended in regulation 22(1)(b) by deleting the words “the Anti-Money Laundering Committee” and substituting “the Financial Intelligence Agency”.

Regulation 26 amended

14. The principal regulations are amended in regulation 26 by deleting subregulation (2) and substituting the following—

“(2) If the DNFBP Supervisor registers an applicant, it must provide it with a certificate of registration.”.

Regulation 29 amended

15. The principal Regulations are amended in regulation 29 by deleting the words “with any person who is situated or incorporated in a country to which the FATF has decided to apply counter-measures” and substituting the words “with any natural and legal persons (including financial institutions) from or person who is situated or incorporated in a country to which the FATF, UN or EU has decided to apply counter-measures”.

Regulation 30A inserted

16. The principal Regulations are amended by inserting after regulations 30 the following—

“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 or avoid having any person who is unsuitable from controlling, or participating directly or indirectly, in the directorship, management or operation of the financial business.”.

Schedule 1 amended

17. Schedule 1 to the principal Regulations is amended by repealing paragraph (b) and substituting the following—

“(b) Trust Companies (Licensing and Supervision) Ordinance.”.

Schedule 2 amended

18. Schedule 2 to the principal Regulations is amended in paragraph 1—

(a) in subparagraph (f) by repealing sub-subparagraph (ii) and substituting the following—

“(ii) engages in realtor activities;”;

(b) by repealing subparagraph (i) and substituting the following—

“(i) a person who operates a casino by way of business whenever a transaction involves \$3,000 or more, or the equivalent in any currency.”.

Made this 27th day of July 2018.

DR. JOHN FREEMAN
GOVERNOR

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations make amendments to the principal Regulations to ensure compliance with FATF AML/CFT requirements.