TURKS AND CAICOS ISLANDS

PROCEEDS OF CRIME ORDINANCE

ANTI-MONEY LAUNDERING AND PREVENTION OF TERRORIST FINANCING (AMENDMENT) CODE 2018

(Legal Notice 54 of 2018)

Arrangement of Regulations

REGULATION

1. Citation and commencement
2. Interpretation
3. Regulation 2 amended
4. Regulation 4 substituted
5. Regulation 5 amended
6. Regulation 6A inserted
7. Regulation 12A inserted
8. Regulation 13 amended
9. Regulation 16 amended
10. Regulation 17 amended
11. Regulation 19 amended
12. Regulation 28 amended
13. Regulation 29 amended
14. Regulation 31 amended
15. Regulation 32 amended
16. Regulation 32A inserted
17. Regulation 37 amended
18. Regulation 46 amended
19. Regulation 46A inserted
20. Regulation 47 amended
21. Regulation 48 amended
22. Regulation 49 amended
23. Regulation 50 inserted

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ISSUED by the Anti-Money laundering Committee under section 118(1) of the Proceeds of Crime Ordinance.

Citation and commencement

1. This Code may be cited as the Anti-Money Laundering and Prevention of Terrorist Financing (Amendment) Code 2018 and shall come into operation on 15 August 2018.

Interpretation

2. In this Code "the Code" means the Anti-Money Laundering and Prevention of Terrorist Financing Code.

Regulation 2 amended

3. The Code is amended in regulation 2(1) by inserting the correct alphabetical positions the following definitions—

"“financial group” means a group that consists of a parent company or any other type of legal person, excising control and coordinating functions over the rest of the group for the application of group supervision together with branches or subsidiaries that are subject to anti-money laundering policies and procedures at the group level;

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

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

Regulation 4 substituted

4. The Code is amended by deleting regulation 4 and substituting the following—

"**Risk assessment**

4 (1) A financial business shall undertake as soon as reasonably practicable after it commences business carry out and document a risk assessment for the purpose of—

(a) assessing the money laundering and terrorist financing risks that it faces faced by the business and its customers;

(b) determining how to best manage and mitigate those risks; and

(c) designing, establishing, maintaining and implementing AML/CFT policies, systems and controls that comply with the requirements of the AML/CFT Regulations and this Code and that are appropriate for the risks that it faces.

(2) The risk assessment carried out under subsection (1) shall take particular account of all relevant risk factors including—

(a) the organisational structure of the financial business, including the extent to which it outsources activities;

(b) its customers;

(c) the countries with which its customers are connected;

(d) the products and services that the financial business provides or offers to provide; and

(e) the persons to whom and how the financial business delivers its products and services;

(f) the nature, scale and complexity of the activities of the financial business;

(g) reliance on third parties for elements of the customer due diligence process; and

(h) new business practices and new or technological developments for new and existing products.

(3) A financial business shall regularly review and update the risk assessment if there are material changes to any of the matters specified in subsection (2).

(4) financial business shall undertake the risk assessments prior to the launch or use of new products, practices and technologies;

(5) As part of the risk assessment referred to above, a financial business shall carry out and document an assessment ("customer risk assessment") that estimates the risk of ML/FT posed by a customer as well as prepare and update a risk profile for each customer taking into account the matters specified in subsection (2).

(6) The customer risk assessment must be undertaken prior to the establishment of a business relationship or the carrying out of an occasional transaction with or for that customer.

(7) The customer risk assessment must have regard to all relevant risk factors, including—

(a) the business risk assessment carried out under subsection (1);

(b) the nature, scale, complexity and location of the customer's activities;

(c) the persons to whom and how the financial business delivers its products and services; and

(d) reliance on third parties for elements of the customer due diligence process.".

Regulation 5 amended

5. The Code is amended in regulation 5 by inserting after subregulation (2) the following—

"(3) In order to assess the effectiveness of the AML/CFT policies, systems and controls, the board shall, amongst other things—

(a) ensure that it receives regular, timely and adequate information relevant to the management of the financial business's money laundering and terrorist financing risk;

(b) monitor the ongoing competence and effectiveness of the MLCO and the MLRO;

(c) undertake periodic reviews of the adequacy of policies and procedures for higher risk customers;

(d) consider whether the incidence of suspicious activity reports (or an absence of such reports) has highlighted any deficiencies in the financial business's customer due diligence or reporting policies and procedures and whether changes are required to address any such deficiencies;

(e) consider whether inquiries have been made by the Financial Intelligence Agency, or production orders received, without issues having previously being identified by customer due diligence or reporting policies and procedures;

(f) consider changes made or proposed in respect of new legislation, regulatory requirements or guidance, or as a result of changes in business activities.

(4) In order to assess compliance with the AML/CFT policies, systems and controls, the board shall periodically commission and consider a compliance report from the MLCO.".

Regulation 6A inserted

6. The Code is amended by inserting after regulation 6 the following—

"Group-wide programmes

6A. A financial group or other person carrying out financial business through a similar financial group arrangement shall implement group-wide programmes against money laundering and terrorist financing, which are applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group and these programmes shall include—

(a) the procedure set out in regulation 17 of the AML/CFT Regulations and regulations 6 and 33;

(b) policies and procedures for sharing information required for the purpose of customer due diligence and

money laundering and terrorist financing risk management;

(c) the provision, at group-level, of compliance, audit and anti-money laundering and counter terrorist financing functions, of customer, account, and transaction information from branched and subsidiaries when necessary for anti-money laundering or counter terrorist financing purposes;

(d) adequate safeguards on the confidentiality and use of information exchanged.".

Regulation 12A inserted

7. The Code is amended by inserting after regulation 12 the following—

"**Customer due diligence re- beneficiary of life insurance**

12A. In addition to the customer due diligence measures required for the customer and the beneficial owner, a financial business shall conduct the following customer due diligence measures on the beneficiary of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated and shall do so no later than at the time of the pay-out—

(a) for a beneficiary that is identified as a specifically named natural person or legal person or legal arrangement – taking the name of the person; and

(b) for a beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information concerning the beneficiary to satisfy the financial business that it will be able to establish the identity of the beneficiary at the time of the pay-out.".

Regulation 13 amended

8. The Code is amended in regulation 13 by inserting after subregulation (5) the following—

"(6) In the case of a life insurance policy, a financial business shall take reasonable measures, no later than at the time of pay-out—

(a) to determine whether the beneficiary and where applicable the beneficial owner of the beneficiary, is a politically exposed person;

(b) to ensure that senior management is informed before pay-out of the policy proceeds; and

(c) to conduct enhance scrutiny on the whole business relationship with the policy holder and if necessary, to consider making a suspicious activity report.".

Regulation 16 amended

9. The Code is amended in regulation 16 (2)—

(a) by deleting paragraph *(c)* and substituting the following—

"(c) evidence that the company exists;";

(b) by deleting the fill stop at the end of paragraph *(j)* and substituting a semicolon; and

(c) by inserting after paragraph *(j)* the following—

"(k) the names of persons occupying a senior management position in the legal entity.".

Regulation 17 amended

10. The Code is amended in regulation 17 by deleting subregulation (2) and substituting the following—

"(2) Where a financial business determines that a legal entity, the identity of which it is required to verify, presents a low risk, the financial business shall verify the regulating powers of the legal entity by obtaining articles of incorporation.".

Regulation 19 amended

11. The Code is amended in regulation 19—

(a) in subregulation (1)*(a)* by—

(i) deleting the "and" at the end of subparagraphs (vi) and (vii);

(ii) inserting after subparagraph (vii) the following—

"(viii) identification information on each beneficiary with a vested right and each beneficiary or each person who is an object of a power;

(ix) 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; and";

(b) in subregulation (1)*(b)* by inserting after the word "changes" the words "on a timely basis"; and

(c) by deleting subregulation (4) and substituting the following—

"(4) Where the financial services business is a trustee, it will obtain and hold adequate, accurate, and current the information specified in subregulation (1)*(a)*(vi) (vii) and (viii) and keep it as up to date as possible, and updated on a timely basis.";

(d) by inserting after subregualtion (4) the following—

"(4A) Where the financial business is a trustee, it must hold basic information on other regulated agents of, and other service providers to, the trust, including, but not limited to, investment advisors or managers and accountants.

(4B) Trustees shall disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction."

Regulation 28 amended

12. The Code is amended in regulation 28(2)—

(a) paragraph *(d)*(i) by inserting after the words "FATF Recommendations" the words "or for which there is call to apply enhanced or countermeasures by the FATF";

(b) in deleting paragraph *(e)* and substituting the following—

"(e) activity and transactions that may be conducted with natural and legal persons (including financial institutions) persons who are the subject of FATF, UN or EU sanctions and countermeasures.".

Regulation 29 amended

13. The Code is amended in regulation 29(1)*(e)* by deleting the words "the Anti-Money Laundering Committee" and substituting "the Financial Intelligence Agency".

Regulation 31 amended

14. The Code is amended in regulation 31*(c)* by deleting the words "the Anti-Money Laundering Committee" and substituting "the Financial Intelligence Agency".

Regulation 32 amended

15. The Code is amended in regulation 32 by deleting the words "the Anti-Money Laundering Committee" wherever they occur and substituting "the Financial Intelligence Agency".

Regulation 32A inserted

16. The code is amended by inserting after regulation 32 the following—

"32A. Where a MLRO forms a suspicion of money laundering or terrorist financing and reasonably believes that satisfying ongoing customer due diligence requirements of the Regulations and this Code for a customer or customer due diligence of the Regulations and this Code for an applicant for business will tip-off a customer or an applicant, the MLRO shall instruct that the financial business not complete the customer due diligence requirement of the Regulations and this Code but the MLRO shall file a suspicious activity report.".

Regulation 37 amended

17. The Code is amended in regulation 37—

(*a*) by deleting the words “the Anti-Money Laundering Committee” wherever they occur and substituting “the Financial Intelligence Agency”; and

(*b*) in paragraph (*d*)(iv) by inserting after the word “customers” the words “, including natural and legal persons”.

Regulation 46 amended

18. The Code is amended in regulation 46 by repealing subregulation (5).

Regulation 46A inserted

19. The Code is amended by inserting after regulation 46 the following—

“**Transfer of funds by digital device**

46A. (1) A transfer of funds made by mobile telephone or any other digital or information technology device will be required to obtain simplified payer and beneficiary information if—

(*a*) the transfer is prepaid and does not exceed $1000;

(*b*) the transfer is post-paid;

(*c*) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services;

(*d*) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds; and

(*e*) the payment service provider of the payee is licensed.

(2) Simplified payer information shall include at a minimum—

(*a*) the name of the payer; and

(*b*) the account number where such account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction.

(3) Simplified beneficiary information shall include at a minimum—

(*a*) the name of the beneficiary; and

(*b*) the account number where such account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction.”.

Regulation 47 amended

20. The Code is amended in regulation 47—

(*a*) by inserting after subregulation (3) the following—

"(3A) A payment service provider of the payer shall collect beneficiary and payee information including the name and account number or unique transaction reference in order to facilitate the traceability of the transaction.";

(b) by deleting subregulation (6) and substituting the following—

"(6) The payment service provider of the payer shall keep records of full originator information, on the payer and the beneficiary, that accompanies the transfer of funds for the period of five years.";

(c) by inserting after subregualtion (10) the following—

"(11) A payment service provider shall not execute a wire transfer if it is not in receipt of the required payer and beneficiary information as required in subregulations (1) to (10).".

Regulation 48 amended

21. The Code is amended in regulation 48—

(a) in subregulation (2) by deleting the words "full originator information" and substituting the words "information on both the payer and payee";

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

"(2A) A payment service provider of the payee shall take reasonable measures, including post-event or real-time monitoring, to identify transfers that lack the required originator or beneficiary information.

(2B) The payment service provider of the payee shall, for transfers of $1,000 or more verify the identity of the beneficiary, if the identity has not been previously verified, and shall maintain this information for five years.";

(c) in subregulation (4) by inserting after the word "POCO" to words "Prevention of Terrorism Ordinance";

(d) by inserting after subregulation (4) the following—

"(4A) A payment service provider of a payee shall adopt risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer where the required originator or beneficiary information is incomplete and the resulting procedures to be applied.";

(e) in subregulation (5) by deleting the words "the Anti-Money Laundering Committee" and substituting the words "the Financial Intelligence Agency";

(f) by inserting after subregulation (5) the following—

"(5A) Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall adopt reasonable measures to rectify noncompliance with this Code, before—

(a) rejecting any future transfers of funds from that payment service provider;

(b) restricting its business relationship with that payment service provider; or

(c) terminating its business relationship with that payment service provider,

and the payment service provider of the payee shall report to the Financial Intelligence Agency and the relevant supervisory authority any such decision to restrict or terminate its business relationship with the payment service provider.".

Regulation 49 amended

22. The Code is amended in regulation 49—

(a) in subregulation (2) by inserting after the word "payer" the words "and beneficiary";

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

"(2A) An intermediary payment service providers shall take reasonable measures to identify cross border wire transfers that lack required originator or beneficiary information.

(2B) An intermediary service provider shall put risk-based policies and procedures in place for determining when to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information and the appropriate follow-up action.";

(c) in subregulation (6) by inserting after the word "payer" the words " and beneficiary".

Regulation 50 inserted

23. The Code is amended by inserting after regulation 49 the following—

"**Money or value transfer services, etc. to comply AML/CFT requirements**

50. (1) A person who carries on money or value transfer services and its agents shall comply with the relevant AML/CFT requirements relating to its business, including wire transfer arrangements in all countries in which it operates either directly or through their agents.

(2) A person who carries on money or value transfer services shall require his or its sub-agents to follow his or its AML/CFT compliance programme and monitor those sub-agents for compliance with the AML/CFT compliance programme.".

Issued this 7th day of August 2018.

Rhondalee Knowles
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Chairman, Anti-Money Laundering Committee