

THE PROCEEDS OF CRIME ORDINANCE 2007
THE ANTI-MONEY LAUNDERING AND PREVENTION
OF TERRORIST FINANCING REGULATIONS 2010

Arrangement of Regulations

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OF TERRORIST FINANCING REGULATIONS 2010

(Legal Notice 14 of 2010)

MADE by the Governor under section 149(2) of the Proceeds of Crime Ordinance.

PART I

PRELIMINARY PROVISIONS AND INTERPRETATION

1. These Regulations may be cited as the Anti-Money Laundering and Prevention of Terrorist Financing Regulations, 2010. Citation

2. (1) In these Regulations— Interpretation

“bank” means a person that carries on banking business within the meaning of the Banking Ordinance, whether or not that business is carried on in, or from within, the Islands;

“beneficial owner” has the meaning specified in regulation 3;

“branch” includes a representative or contact office;

“business relationship” means a business, professional or commercial relationship between a financial business and a customer which is expected by the financial business, at the time when contact is established, to have an element of duration;

“cash” means –

- (a) notes and coins,
- (b) postal orders, or
- (c) travellers’ cheques,

in any currency;

“Code” means an Anti-Money Laundering and Prevention of Terrorist Financing Code issued under section 111 of the Ordinance and, in relation to a financial business, means a Code that applies to the financial business;

“Commission” means the Financial Services Commission established under the Financial Services Commission Ordinance 2001 and continued under the Financial Services Commission Ordinance 2007;

“correspondent banking relationship” has the meaning specified in regulation 7(1);

- “customer due diligence measures” has the meaning specified in regulation 5;
- “enhanced customer due diligence measures” has the meaning specified in regulation 13(1);
- “enhanced ongoing monitoring” has the meaning specified in regulation 13(1);
- “FATF” means the international body known as the Financial Action Task Force on Money Laundering;
- “FATF Recommendations” means—
- (a) the Forty Recommendations, and
 - (b) the Nine Special Recommendations,
- issued by the FATF, incorporating the amendments made on 22 October 2004 and such other amendments as may from time-to-time be made;
- “financial business” has the meaning specified in Schedule 2;
- “foreign regulated person” has the meaning specified in regulation 8;
- “foreign regulatory authority”, means an authority in a jurisdiction outside the Islands which exercises in that jurisdiction supervisory functions substantially corresponding to those of the Commission or the supervisory authority for non-regulated financial businesses, with respect to enforcing compliance with the Ordinance, these Regulations and the Codes;
- “high value dealer” means a person who, by way of business, trades in goods, precious metals or precious stones, when he 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 of—
- (a) in the case of precious metals or precious stones, at least \$15,000, or the equivalent in another currency;
 - (b) in the case of any other goods, at least \$50,000, or the equivalent in another currency;
- “identification information” has, in relation to a financial business, the meaning specified in the relevant Code;
- “independent legal professional” means a firm or sole practitioner who, by way of business, provides legal or notarial services to other persons, when preparing for or carrying out transactions for a customer in relation to—
- (a) the buying and selling of real estate and business entities;
 - (b) the managing of client money;
 - (c) the opening or management of bank, savings or securities accounts;

- (d) the organisation of contributions necessary for the creation, operation or management of companies; or
- (e) the creation, operation or management of trusts, companies or similar structures, excluding any activity that requires a licence under the Trustees Licensing Ordinance or the Company Management (Licensing) Ordinance;

“intermediary” means a person who has or seeks to establish a business relationship or to carry out an occasional transaction on behalf of his customer with a financial business, so that the intermediary becomes a customer of the financial business;

“introducer” means a person who has a business relationship with a customer and who introduces that customer to a financial business with the intention that the customer will form a business relationship or conduct an occasional transaction with the financial business so that the introducer’s customer also becomes a customer of the financial business;

“money laundering compliance officer” means the person appointed by a financial business as its compliance officer under regulation 21;

“money laundering disclosure” means a disclosure under section 117, 118 or 119 of the Ordinance;

“Money Laundering Reporting Officer” or “MLRO” means the person appointed by a financial business under regulation 22;

“NRFB Register” means the register of non-regulated financial businesses established and kept under regulation 24;

“occasional transaction” has the meaning specified in regulation 4;

“ongoing monitoring” has the meaning specified in regulation 5(5);

“Ordinance” means the Proceeds of Crime Ordinance, 2007;

“politically exposed person” has the meaning specified in regulation 6;

“recognised exchange” has the meaning specified in sub-regulation (4);

“regulated business” means a business for which a regulatory licence is required;

“regulated person” means a person who holds a regulatory licence;

“regulatory licence” means a licence specified in Schedule 1;

“relevant business” means a business which, if carried on by a person, would result in that person being a financial business;

“Reporting Authority” means the Reporting Authority established under the Ordinance;

“shell bank” has the meaning specified in regulation 7(3);

“sole trader” means an individual carrying on a relevant business who does not in the course of doing so—

- (a) employ any other person; or
- (b) act in association with any other person;

“supervisory authority” means—

- (a) in the case of a regulated financial business, the Commission; and
- (b) in the case of a non-regulated financial business, the NRFB Supervisor;

“Terrorism (UN) Order” means the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;

“terrorist financing disclosure” means a disclosure under—

- (a) article 10 or Part 1 of Schedule 1 of the Anti-terrorist Financing Order;
- (b) article 8 of the Terrorism (UN) Order 2001; or
- (c) article 10 of the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002; and

“third party” means a person for whom a customer is acting.

(2) Words and expressions defined in the Ordinance have the same meaning in these Regulations.

(3) In these Regulations, unless the context otherwise requires, “customer” includes a prospective customer.

(4) Subject to sub-regulation (5), “recognised exchange” means—

- (a) an exchange that is a member of the World Federation of Exchanges; or
- (b) such other exchange as may be recognised by the Commission by notice published in the *Gazette*.

(5) An exchange is not a recognised exchange within the meaning of sub-regulation (4) if it is situated in a country specified by the Commission, by notice published in the *Gazette*, as a country that does not implement, or does not effectively apply, the FATF Recommendations

Meaning of
“beneficial
owner”

3. (1) Subject to sub-regulation (3), each of the following is a beneficial owner of a legal person, a partnership or an arrangement—

- (a) an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner; and
- (b) an individual who exercises ultimate control over the management of the legal person, partnership or

arrangement, whether alone or jointly with any other person or persons.

(2) For the purposes of sub-regulation (1), it is immaterial whether an individual's ultimate ownership or control of a legal person, partnership or 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.

(4) In this regulation, an "arrangement" includes a trust.

4. (1) A transaction is an occasional transaction if the transaction is carried out otherwise than as part of a business relationship, and is carried out as—

Meaning of "occasional transaction"

- (a) a single transaction that amounts to the sum specified in sub-regulation (2), or more; or
- (b) two or more linked transactions that, in total amount to the sum specified in sub-regulation (2), or more, where—
 - (i) it appears at the outset to any person handling any of the transactions that the transactions are linked; or
 - (ii) at any later stage it comes to the attention of any person handling any of those transactions that the transactions are linked.

(2) The amount specified for the purposes of sub-regulation (1) is—

- (a) in the case of a transaction, or linked transactions, carried in the course of a money services business, \$1,000; or
- (b) in the case of any other transaction, or linked transactions, \$15,000.

5. (1) "Customer due diligence measures" are measures for—

Meaning of "customer due diligence measures" and "ongoing monitoring"

- (a) identifying a customer;
- (b) determining whether the customer is acting for a third party and, if so, identifying the third party;
- (c) verifying the identity of the customer and any third party for whom the customer is acting;
- (d) identifying the identity of each beneficial owner of the customer and third party, where either the customer or third party, or both, are not individuals;
- (e) taking reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of the customer and third party so that the financial business is satisfied that it knows who each beneficial owner is including, in the case of a legal

person, partnership, trust or similar arrangement, taking reasonable measures to understand the ownership and control structure of the legal person, partnership, trust or similar arrangement; and

(f) obtaining information on the purpose and intended nature of the business relationship or occasional transaction.

(2) Customer due diligence measures include—

(a) where the customer is not an individual, measures for verifying that any person purporting to act on behalf of the customer is authorised to do so, identifying that person and verifying the identity of that person; and

(b) where the financial business carries on insurance business, measures for identifying each beneficiary under any long term or investment linked policy issued or to be issued by the financial business and verifying the identity of each beneficiary.

(3) Customer due diligence measures do not fall within this regulation unless they provide for verifying the identity of persons whose identity is required to be verified, on the basis of documents, data or information obtained from a reliable and independent source.

(4) Where customer due diligence measures are required by this regulation to include measures for identifying and verifying the identity of the beneficial owners of a person, those measures are not required to provide for the identification and verification of any individual who holds shares in a company that is listed on a recognised exchange.

(5) “Ongoing monitoring” of a business relationship means—

(a) scrutinising transactions undertaken throughout the course of the relationship, including where necessary the source of funds, to ensure that the transactions are consistent with the financial business’s knowledge of the customer and his business and risk profile; and

(b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date and relevant by undertaking reviews of existing records.

Meaning of
“politically
exposed person”

6. (1) “Politically exposed person” means a person who is—

(a) an individual who is, or has been, entrusted with a prominent public function by—

(i) a country, including the Islands; or

(ii) an international body or organization;

- (b) an immediate family member of a person referred to in paragraph (a); or
- (c) a known close associate of a person referred to in paragraph (a).

(2) Without limiting sub-regulation (1)(a), the following are politically exposed persons within the meaning of that sub-regulation—

- (a) heads of state, heads of government and senior politicians;
- (b) senior government or judicial officials;
- (c) high-ranking officers in the armed forces;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors and chargés d'affaires;
- (f) senior executives of state-owned corporations; and
- (g) important political party officials.

(3) Without limiting sub-regulation (1)(b), the following are immediate family members of a person specified in sub-regulation (1)(a)—

- (a) a spouse;
- (b) a partner, that is an individual considered by his or her national law as equivalent to a spouse;
- (c) children and their spouses or partners, as defined in paragraph (b);
- (d) parents;
- (e) grandparents and grandchildren; and
- (f) siblings.

(4) Without limiting sub-regulation (1)(c), the following are close associates of a person specified in sub-regulation (1)(a)—

- (a) any person known to maintain a close business relationship with that person or to be in a position to conduct substantial financial transactions on behalf of the person;
- (b) any person who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with that person; and
- (c) any person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of that person.

(5) For the purposes of deciding whether a person is a close associate of a person referred to in sub-regulation (1)(a), a

financial business need only have regard to information which is in that person's possession or is publicly known.

Meaning of
"shell bank" and
"correspondent
banking"

7. (1) "Correspondent banking" means the provision of banking services by one bank, (the "correspondent bank") to another bank (the "respondent bank").

(2) Without limiting sub-regulation (1), banking services includes—

- (a) cash management, including establishing interest-bearing accounts in different currencies;
- (b) international wire transfers of funds;
- (c) cheque clearing;
- (d) payable-through accounts; and
- (e) foreign exchange services.

(3) A "shell bank" is a bank that—

- (a) is incorporated and licensed in a country in which it has no physical presence involving meaningful decision-making and management; and
- (b) is not subject to supervision by the Commission or a foreign regulatory authority, by reason of its membership of, or affiliation to, a group that is subject to effective consolidated supervision.

Meaning of
"foreign
regulated
person"

8. (1) "Foreign regulated person" means a person—

- (a) that is incorporated in, or if it is not a corporate body, has its principal place of business in, a jurisdiction outside the Islands (its "home jurisdiction");
- (b) that carries on business outside the Islands that, if carried on in the Islands, would require a regulatory licence;
- (c) that, in respect of the business referred to in paragraph (b)—
 - (i) is subject to legal requirements in its home jurisdiction for the prevention of money laundering and terrorist financing that are consistent with the requirements of the FATF Recommendations, for the time being issued, for that business; and
 - (ii) is subject to effective supervision for compliance with those legal requirements by a foreign regulatory authority.

(2) For the purposes of the definition of "foreign regulated person", the Code may specify jurisdictions that may be regarded as having legal requirements for the prevention of money

laundering that are consistent with the requirements of the FATF Recommendations.

9. These Regulations apply to all financial businesses.

Scope of
Regulations

10. (1) Subject to sub-regulations (2), (3) and (4), a relevant financial business that has a branch located in, or a subsidiary incorporated in, a country outside the Islands shall, to the extent that the laws of that country permit—

Application of
Regulations
outside the
Islands

- (a) comply with these Regulations and the Code in respect of any business carried on through the branch; and
- (b) ensure that these Regulations and the Code are complied with by the subsidiary with respect to any business that it carries on.

(2) A relevant financial business shall have particular regard to ensure that sub-regulation (1) is complied with where the country in which its branch or subsidiary is situated does not apply, or insufficiently applies, the FATF Recommendations.

(3) If the country in which a branch or subsidiary of a financial business is situated has more stringent standards with respect to the prevention of money laundering and terrorist financing than are provided for in these Regulations and the Code, the relevant financial business shall ensure that the more stringent requirements are complied with by its branch or subsidiary.

(4) Where the laws of a country outside the Islands do not permit a branch or subsidiary of a financial business to comply with sub-regulation (1), the relevant financial business shall—

- (a) notify the Commission in writing; and
- (b) to the extent that the laws of the foreign country permit, apply alternative measures to ensure compliance with the FATF Recommendations and to deal effectively with the risk of money laundering and terrorist financing.

(5) For the purposes of this regulation, “relevant financial business” means a financial business—

- (a) that is a regulated financial business; and
- (b) that is—
 - (i) a company incorporated in the Islands;
 - (ii) a partnership based in the Islands;
 - (iii) an individual resident in the Islands; or
 - (iv) any other person having its principal or head office in the Islands.

PART II

CUSTOMER DUE DILIGENCE

Application of
customer due
diligence
measures and
ongoing
monitoring

11. (1) Subject to sub-regulations (5) and (6), a financial business shall apply customer due diligence measures—

- (a) before the financial business establishes a business relationship or carries out an occasional transaction;
- (b) where the financial business—
 - (i) suspects money laundering or terrorist financing; or
 - (ii) doubts the veracity or adequacy of documents, data or information previously obtained under its customer due diligence measures or when conducting ongoing monitoring; and
- (c) at other appropriate times to existing customers as determined on a risk-sensitive basis.

(2) Without limiting sub-regulation (1)(b)(ii) and (1)(c), a financial business shall obtain identification information when there is a change in the—

- (a) identification information of a customer;
- (b) beneficial ownership of a customer; or
- (c) third parties, or the beneficial ownership of third parties.

(3) A financial business shall conduct ongoing monitoring of a business relationship.

(4) In applying customer due diligence measures and conducting ongoing monitoring, a financial business shall—

- (a) assess the risk that any business relationship or occasional transaction involves, or will involve, money laundering or terrorist financing, depending upon the type of customer, business relationship, product or transaction;
- (b) be able to demonstrate to the supervisory authority—
 - (i) that the extent of the customer due diligence measures applied in any case is appropriate having regard to the circumstances of the case, including the risks of money laundering and terrorist financing; and
 - (ii) that it has obtained appropriate information to carry out the risk assessment required under paragraph (a).

(5) A financial business may complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship if—

- (a) it is necessary not to interrupt the normal conduct of business;
- (b) there is little risk of money laundering or terrorist financing occurring as a result; and
- (c) verification of identity is completed as soon as reasonably practicable after the contact with the customer is first established.

(6) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that, before verification has been completed—

- (a) the account is not closed; and
- (b) transactions are not carried out by or on behalf of the account holder, including any payment from the account to the account holder.

(7) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

12. (1) If a financial business is unable to apply customer due diligence measures before the establishment of a business relationship or before the carrying out of an occasional transaction in accordance with these Regulations, the financial business shall not establish the business relationship or carry out the occasional transaction.

Requirement to
cease transaction
or terminate
relationship

(2) If regulation 11(5) or (6) apply and a financial business is unable to complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship, the financial business shall terminate the business relationship with the customer.

(3) If a financial business is unable to undertake ongoing monitoring with respect to a business relationship, the financial business shall terminate the business relationship.

(4) If sub-regulation (1), (2) or (3) applies with respect to a financial business, the financial business shall consider whether he is required to make a money laundering disclosure or a terrorist financing disclosure.

(5) Sub-regulations (1), (2) and (3) do not apply where the financial business is a lawyer and is in the course of ascertaining the legal position for that person's client or performing the task of defending or representing the client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

(6) If the financial business has made a money laundering or terrorist financing disclosure, sub-regulations (1), (2) and (3) do not apply to the extent that the financial business is acting—

- (a) in the case of a money laundering disclosure, with the consent or deemed consent of the Reporting Authority; or
- (b) in the case of a terrorist financing disclosure made under the Anti-terrorist Financing Order, with the consent of a constable, where such consent may lawfully be given.

(7) A financial business who contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

Enhanced
customer due
diligence and
ongoing
monitoring

13. (1) For the purposes of these Regulations, “enhanced customer due diligence measures” and “enhanced ongoing monitoring” mean customer due diligence measures, or ongoing monitoring, that involve specific and adequate measures to compensate for the higher risk of money laundering or terrorist financing.

(2) A financial business shall, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring—

- (a) where the customer has not been physically present for identification purposes;
- (b) where the financial business has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country that does not apply, or insufficiently applies, the FATF recommendations;
- (c) where the financial business is a bank which holds a National Banking licence granted under the Banking Ordinance that has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside the Islands;
- (d) where the financial business has or proposes to have a business relationship with, or to carry out an occasional transaction with, a politically exposed person;
- (e) where any of the following is a politically exposed person—
 - (i) a beneficial owner of the customer;
 - (ii) a third party for whom a customer is acting;
 - (iii) a beneficial owner of a third party described in subparagraph (ii);

(iv) a person acting, or purporting to act, on behalf of the customer.

(f) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

(3) A financial business who contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

14. (1) Subject to this regulation and any requirements in the Code, a financial business may rely on an introducer or an intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner, if—

Reliance on
introducers and
intermediaries

(a) the introducer or intermediary is a regulated person or a foreign regulated person; and

(b) the introducer or intermediary consents to being relied on.

(2) Before relying on an introducer or intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner, a financial business shall obtain adequate assurance in writing from the intermediary or introducer that—

(a) the intermediary or introducer has applied the customer due diligence measures for which the financial business intends to rely on it;

(b) the intermediary or introducer is required to keep, and does keep, a record of the evidence of identification relating to each of the customers of the intermediary or introducer;

(c) the intermediary or introducer will, without delay, provide the information in that record to the financial business at the financial business's request; and

(d) the intermediary or introducer will, without delay, provide the information in the record for provision to the Commission, where requested by the Commission.

(3) Where a financial business relies on an introducer or intermediary to apply customer due diligence measures, the financial business remains liable for any failure to apply those measures.

(4) This regulation does not prevent a financial business from applying customer due diligence measures by means of an outsourcing financial business or agent provided that the financial business remains liable for any failure to apply such measures.

15. (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—

Simplified due
diligence
requirements

- (a) he has reasonable grounds for believing that the customer is—
 - (i) a regulated person;
 - (ii) a foreign regulated person;
 - (iii) a public authority in the Islands; or
 - (iv) a body corporate, the securities of which are listed on a recognised exchange.
- (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.

(2) Sub-regulation (1)(a) does not apply with respect to any third party for whom the customer may be acting or with respect to the beneficial owners of such a third party.

- (3) Sub-regulation (1) does not apply if—
 - (a) the financial business suspects money laundering or terrorist financing; or
 - (b) the customer is located, or resides, in a country that does not apply, or insufficiently applies, the FATF recommendations.

Shell banks and anonymous and numbered accounts

16. (1) A bank that carries on banking business in or from within the Islands—

- (a) shall not enter into or continue a correspondent banking relationship with a shell bank; and
- (b) shall take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship with a bank that is known to permit its accounts to be used by a shell bank.

(2) A financial business shall not set up or maintain a numbered account, an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious.

(3) A bank that contravenes sub-regulation (1) or a financial business that contravenes sub-regulation (2) is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$100,000.

PART III

POLICIES, SYSTEMS AND CONTROLS, RECORD KEEPING AND TRAINING

17. (1) Subject to sub-regulation (5), a financial business shall establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls relating to—

Policies, systems and controls to prevent and detect money laundering and terrorist financing

- (a) customer due diligence measures and ongoing monitoring;
- (b) the reporting of disclosures;
- (c) record-keeping;
- (d) the screening of employees;
- (e) internal controls;
- (f) risk assessment and management;
- (g) the monitoring and management of compliance with, and the internal communication of, its policies, systems and controls to prevent and detect money laundering and terrorist financing, including those specified in paragraphs (a) to (f).

(2) The policies, systems and controls referred to in paragraph (1) must include policies, systems and controls which provide for—

- (a) the identification and scrutiny of—
 - (i) complex or unusually large transactions;
 - (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
 - (iii) any other activity which the financial business regards as particularly likely by its nature to be related to the risk of money laundering or terrorist financing;
- (b) the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which are susceptible to anonymity;
- (c) determining whether—
 - (i) a customer, any third party for whom the customer is acting and any beneficial owner of the customer or third party, is a politically exposed person;
 - (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

- (iii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country that is subject to measures for purposes connected with the prevention and detection of money laundering or terrorist financing, imposed by one or more countries or sanctioned by the European Union or the United Nations.

(3) A financial business with any subsidiary or branch that carries on a relevant business shall communicate to that subsidiary or branch, whether in or outside the Islands, the financial business's policies and procedures maintained in accordance with this regulation.

(4) A financial business shall maintain adequate procedures for monitoring and testing the effectiveness of—

- (a) the policies and procedures maintained under this regulation; and
- (b) the training provided under regulation 20.

(5) A sole trader is not required to maintain policies and procedures relating to internal reporting, screening of employees and the internal communication of such policies and procedures.

(6) For the purposes of this regulation—

- (a) “scrutiny” includes scrutinising the background and purpose of transactions and activities;
- (b) “transaction” means any of the following—
 - (i) an occasional transaction;
 - (ii) a transactions within an occasional transaction; or
 - (iii) a transaction undertaken within a business relationship.

(7) A financial business who contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

Records required to be kept

18. (1) Subject to sub-regulation (4), a financial business shall keep the records specified in sub-regulation (2) and such additional records as may be specified in the Code—

- (a) in a form that enables them to be made available on a timely basis, when lawfully required, to the Commission or law enforcement authorities in the Islands; and
- (b) for at least the period specified in regulation 19.

(2) The records specified for the purposes of sub-regulation (1) are—

- (a) a copy of the evidence of identity obtained pursuant to the application of customer due diligence measures or ongoing monitoring, or information that enables a copy of such evidence to be obtained;
- (b) the supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring;
- (c) a record containing details relating to each transaction carried out by the financial business in the course of any business relationship or occasional transaction;
- (d) all account files; and
- (e) all business correspondence relating to a business relationship or an occasional transaction.

(3) The record to which sub-regulation (2)(c) refers must include sufficient information to enable the reconstruction of individual transactions.

(4) A financial business who is relied on by another person in accordance with these regulations shall keep the records specified in paragraph (2)(a) for the period of five years beginning on the date on which he is relied on in relation to any business relationship or occasional transaction.

(5) Where the financial business (the “first person”) is an introducer or intermediary and has given the assurance that is required under regulation 14(2) to another financial business (the “second person”), the first person shall make available to the second person, at the second person’s request, a copy of the evidence of identification that the first person is required to keep under this regulation, such evidence being the evidence that is referred to in regulation 14(2).

(6) Sub-regulations (4) and (5) do not apply where a financial business applies customer due diligence measures by means of an outsourcing financial business or agent.

(7) For the purposes of this regulation, a person relies on another person where he does so in accordance with regulation 14.

(8) A financial business who contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

19. (1) Subject to sub-regulation (2), the period specified for the purposes of regulation 18 is 5 years beginning on—

- (a) in the case of the records specified in regulation 18(2)(a), the date on which—

Period for which records must be kept

- (i) the occasional transaction is completed; or
- (ii) the business relationship ends; or
- (b) in the case of the records specified in sub-regulation 18(2)(b)—
 - (i) where the records relate to a particular transaction, the date on which the transaction is completed;
 - (ii) for all other records, the date on which the business relationship ends.

(2) The Commission or the Reporting Authority may, by written notice, specify a period longer than 5 years for the purposes of regulation 18, and such longer period as is specified in the notice shall apply instead of the period of 5 years specified in sub-regulation (1).

Training

20. (1) A financial business shall take appropriate measures for the purposes of making employees whose duties relate to the provision of relevant business aware of—

- (a) the anti-money laundering and counter-terrorist financing policies, procedures, systems and controls maintained by the financial business in accordance with these Regulations or the Code;
- (b) the law of the Islands relating to money laundering and terrorist financing offences; and
- (c) these Regulations, the Code and any Guidance issued by the Commission or a supervisory authority.

(2) A financial business shall provide employees specified in sub-regulation (1) with training in the recognition and handling of—

- (a) transactions carried out by or on behalf of any person who is or appears to be engaged in money laundering or terrorist financing; and
- (b) other conduct that indicates that a person is or appears to be engaged in money laundering or terrorist financing.

(3) For the purposes of sub-regulation (2), training shall include the provision of information on current money laundering techniques, methods, trends and typologies.

(4) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

PART IV

COMPLIANCE AND DISCLOSURES

21. (1) Subject to sub-regulation (8), a financial business, other than a sole trader, shall appoint an individual approved by the relevant supervisory authority as its money laundering compliance officer in respect of the relevant business being carried on by the financial business.

Money
laundering
compliance
officer

(2) A sole trader is the money laundering compliance officer in respect of his or her relevant business.

(3) A financial business shall ensure that—

- (a) the individual appointed as money laundering compliance officer under this regulation is of an appropriate level of seniority; and
- (b) the compliance officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as money laundering compliance officer.

(4) The principle function of the money laundering compliance officer is to oversee and monitor the financial business's compliance with the Ordinance, all legislation in force concerning terrorist financing, these Regulations and the Code.

(5) When an individual has ceased to be the money laundering compliance officer of a financial business, the financial business shall as soon as practicable appoint another individual approved by the relevant supervisory authority as its money laundering compliance officer.

(6) A financial business shall give the Commission written notice within 7 days after the date—

- (a) of the appointment of a money laundering compliance officer; or
- (b) that an individual ceases, for whatever reason, to be its money laundering compliance officer.

(7) The money laundering compliance officer of a financial business may also be appointed to be its money laundering reporting officer.

(8) The Codes may modify the requirements of this regulation in relation to particular types or category of financial business.

(9) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$25,000.

Money
laundering
reporting officer

22. (1) Subject to sub-regulation (6), a financial business, other than a sole trader, shall appoint an individual as its money laundering reporting officer to—

- (a) receive and consider internal money laundering and terrorist financing disclosures;
- (b) considering whether a suspicious activity report should be made to the Reporting Authority; and
- (c) where he considers a suspicious activity report should be made, submitting the report.

(2) A financial business shall ensure that—

- (a) the individual appointed as money laundering reporting officer under this regulation is of an appropriate level of seniority; and
- (b) the money laundering reporting officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions.

(3) When an individual has ceased to be the money laundering reporting officer of a financial business, the financial business shall forthwith appoint another individual approved by the relevant supervisory authority as its money laundering reporting officer.

(4) A financial business shall give the Commission written notice within 7 days after the date—

- (a) of the appointment of a money laundering reporting officer; or
- (b) that an individual ceases, for whatever reason, to be its money laundering reporting officer.

(5) The money laundering reporting officer of a financial business may also be appointed to be its money laundering compliance officer.

(6) The Codes may modify the requirements of this regulation in relation to particular types or category of financial business.

(7) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$25,000.

PART V

NON-REGULATED FINANCIAL BUSINESSES

Designated
supervisory
authority

23. The Commission is designated as the sole supervisory authority for financial business who are not regulated persons for the purposes of section 148F (2) of the Ordinance.

24. (1) The NRFB Supervisor must establish and keep a register of non-regulated financial businesses.

Register of non-regulated financial businesses

(2) The NRFB Register shall contain the following information in respect of each non-regulated financial business that has been registered in accordance with regulation 26—

- (a) the name, address in the Islands and contact details of the non-regulated financial business;
- (b) the relevant business for which the non-regulated financial business is registered;
- (c) the date of registration and, if applicable, de-registration of the non-regulated financial business;
- (d) such other information as the NRFB Supervisor considers appropriate.

(3) The NRFB Register and the information contained in any document filed with the NRFB Supervisor may be kept in such manner as the NRFB Supervisor considers appropriate, including either wholly or partly, by means of a device or facility that—

- (a) records or stores information magnetically, electronically or by other means; and
- (b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

25. (1) A person may apply to the NRFB Supervisor to be registered as a non-regulated financial business in the NRFB Register.

Application to register

(2) The application must—

- (a) be in writing and in the form specified by the NRFB Supervisor;
- (b) be signed by the applicant or by a person acting on the applicant's behalf;
- (c) be accompanied by such documents or information as may be specified on the application form or by the NRFB Supervisor.

(3) The NRFB Supervisor may require an applicant to—

- (a) provide it with such documents and information, in addition to those specified in sub-regulation (2), as it reasonably requires to determine the application and any such information shall be in such form as the NRFB Supervisor may require; and
- (b) verify any document and information provided in support of an application in such manner as the NRFB Supervisor may specify.

(4) If, before the determination by the NRFB Supervisor of an application—

- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the NRFB Supervisor in connection with the application; or
- (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading;

the applicant shall give the NRFB Supervisor as soon as possible written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

Registration

26. (1) Following the receipt of an application under regulation 25 and any additional documents or information that it has required under regulation 25(3), the NRFB Supervisor must either—

- (a) register the applicant as a non-regulated financial business in the NRFB Register; or
- (b) refuse the application under regulation 27.

(2) If the NRFB Supervisor registers the applicant, it must provide it with written notice of its registration.

Refusal of application

27. (1) The NRFB Supervisor may refuse an application for registration if—

- (a) the application does not comply with regulation 25;
- (b) the applicant fails to provide any information or documents required by the NRFB Supervisor under regulation 25(3); or
- (c) the NRFB Supervisor is of the opinion that—
 - (i) the applicant does not intend to carry on the relevant business for which it seeks registration;
 - (ii) the non-regulated financial business, or any of its directors, senior officers or owners do not satisfy the NRFB Supervisor’s fit and proper criteria; or
 - (iii) it is contrary to the public interest for the non-regulated financial business to be registered.

(2) If the NRFB Supervisor refuses an application for registration, it must send the applicant a written notice of refusal, stating the grounds for its refusal.

Disciplinary action

28. For the purposes of sections 148M of the Act—

- (a) a non-regulated financial business who contravenes a provision of these Regulations set out in Columns 1 and 2 of the table in Schedule 3, commits a disciplinary violation; and

- (b) the amount specified in Column 3 of the table in Schedule 2 with respect to a disciplinary violation, is the maximum administrative penalty that the NRFB Supervisor may impose on a non-regulated financial business for that disciplinary violation.

PART VI

MISCELLANEOUS

29. The relevant supervisory authority may direct a financial business—

Directions where FATF applies counter-measures

- (a) not to enter into a business relationship;
- (b) not to carry out an occasional transaction;
- (c) not to proceed any further with a business relationship or occasional transaction;
- (d) to impose any prohibition, restriction or limitation relating to a business relationship or occasional transaction; or
- (e) to apply enhanced customer due diligence measures to any business relationship or occasional transaction;

with any person who is situated or incorporated in a country to which the FATF has decided to apply counter-measures.

30. (1) For the purposes of section 133 of the Ordinance, “customer information”, in relation to a person (“the specified person”) and a regulated person, is information whether the specified person holds, or has held, an account or accounts at the regulated person, whether solely or jointly with another, and, if so, information as to—

Customer information

- (a) the account number or numbers;
- (b) the specified person’s full name;
- (c) where the specified person is an individual, the individual’s—
 - (i) date of birth; and
 - (ii) most recent address, any previous address, any postal address and any previous postal address;
- (d) where the specified person is a company—
 - (i) the country where the company is incorporated or is otherwise constituted, established or registered;
 - (ii) the address of the registered office, any previous registered office, any business

address, any previous business address, any postal address and any previous postal address;

- (e) where the specified person is a partnership or unincorporated body of persons, the information specified in paragraph (c) with respect to each individual authorised to operate the account, whether solely or jointly;
- (f) such evidence of identity with respect to the specified person as has been obtained by the regulated person;
- (g) the date or dates on which the specified person began to hold the account or accounts and, if the specified person has ceased to hold the account or any of the accounts, the date or dates on which the person did so;
- (h) the full name of any person who holds, or has held, an account at the regulated person jointly with the specified person;
- (i) the account number or numbers of any other account or accounts held at the regulated person to which the specified person is a signatory and details of the person holding the other account or accounts;
- (j) the full name and the information contained in paragraph (c), (d) or (e), as relevant, of any person who is a signatory to an account specified in paragraph (i).

Prescribed amounts

31. The following amounts are prescribed for the purposes of the Ordinance—

- (a) application of section 32(1) of the Ordinance (minimum amount remaining to be paid under a confiscation order for discharge), the amount prescribed is \$500;
- (b) discharge under section 33 of the Ordinance, the amount prescribed is \$100;
- (c) minimum threshold for the purposes of section 94(1) of the Ordinance, the amount prescribed is \$250;
- (d) definition of “recoverable cash” under section 106 of the Ordinance, the amount prescribed is \$250.

Revocation

32. The Anti-Money Laundering Regulations, 2007 are revoked.

SCHEDULE 1

(Regulation 2)

REGULATORY LICENCES

“Regulatory licence” means—

- (a)* a licence issued under the Banking Ordinance; *Cap.118*
- (b)* a licence issued under the Trustees Licensing Ordinance; *Cap. 123*
- (c)* a licence issued under the Company Management (Licensing) Ordinance; *Ord. 1 of 1999*
- (d)* a licence issued under the Mutual Funds Ordinance; *Ord. 13 of 1998*
- (e)* a licence issued under the Investment Dealers (Licensing) Ordinance; *Ord. 12 of 2001*
- (f)* a licence issued under the Insurance Ordinance. *Cap. 121*
- (g)* a licence issued under the Money Transmitters Ordinance *Ord. 13 of 2007*

SCHEDULE 2

(Regulation 2)

FINANCIAL BUSINESS

1. The following are “financial businesses” when acting in the course of a business carried on in, or from within, the Islands—

- (a) subject to paragraph 2, a person who carries on any kind of regulated business;
- (b) a person who carries on money services business as defined in the Money Transmitters Ordinance;
- (c) a person who, by way of business, provides any of the following services to third parties—
 - (i) acting as a secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or arranging for another person to act in one of the foregoing capacities or as the director of a company;
 - (ii) providing a business, accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (iii) acting as, or arranging for another person to act as, a nominee shareholder for another person;
- (d) a person who conducts as a business one or more of the following activities for, or on behalf of, a customer—
 - (i) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions, including forfeiting;
 - (ii) financial leasing;
 - (iii) issuing and managing means of payment, including credit and debit cards, cheques, travellers’ cheques, money orders and bankers’ drafts and electronic money;
 - (iv) financial guarantees or commitments;
 - (v) participation in securities issues and the provision of financial services related to such issues;
 - (vi) providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;

Ord. 13 of 2007

- (vii) safekeeping and administration of cash;
- (viii) investing administering or managing funds or money;
- (ix) money broking.
- (e) a person who, as a business, trades for his own account or for the account of customers in—
 - (i) money market instruments, including cheques, bills, certificates of deposit and derivatives;
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index instruments;
 - (iv) financial futures and options;
 - (v) commodities futures; or
 - (vi) shares and other transferable securities;
- (f) a person who, by way of business—
 - (i) provides accountancy or audit services; or
 - (ii) acts as a real estate agent;
- (g) an independent legal professional;
- (h) a high value dealer;
- (i) a person who operates a casino by way of business, whenever a transaction involves accepting a total cash payment of \$3,000 or more, or the equivalent in another currency.

2. A company that carries on insurance business is a financial business only where it carries on—

- (a) long-term insurance business; or
- (b) any form of life insurance business or investment related insurance business that may be classified as general insurance business.

3. A person who carries on business as an insurance intermediary is a financial business only where the person acts with respect to any type of business referred to in paragraph 2(a) or (b).

SCHEDULE 3

(Regulation 28)

DISCIPLINARY ACTION, NON-REGULATED FINANCIAL BUSINESSES

REGULATION	Brief Description of Violation	ADMINISTRATIVE PENALTY (\$)
11(1)	Failure to apply required customer due diligence measures	\$5,000
12	Failure to comply with requirements in sub-regulation (2) and (3) concerning business relationship with the customers	\$7,500
13 (1)	Failure to apply enhanced due diligence in respect of any relevant requirements in 13(1)(a) – (f).	\$5,000
16 (1) and (2)	Failure to comply with the requirements in sub-regulation (1) and (2) not to set up or maintain a numbered account, an anonymous account or in a name that is fictitious	\$7,500
17	Failure to comply with requirements in sub-regulations (3) and (4) concerning the maintenance of policies and procedures	\$2,500 and \$250 for every day the disciplinary violation continues or occurs
18	Failure to comply with the requirements in sub-regulation (1), (4), and (5) concerning the keeping of records	\$2,500 and \$250 for every day the disciplinary violation continues or occurs
20	Failure to comply with the requirements in sub-regulations (1) and (2) concerning the training of employees	\$2,500 and \$100 for every day the disciplinary violation continues or occurs

21	Failure to comply with the requirements in sub-regulations (1), (3), (5) and (6) concerning the appointment of a money laundering compliance officer	\$2,500 and \$100 for every day the disciplinary violation continues or occurs
22	Failure to comply with the requirements in sub-regulations (1), (2), (3) and 4 concerning the appointment of a money laundering reporting officer	\$2,500 and \$100 for every day the disciplinary violation continues or occurs

MADE this 29th day of July 2010.

**GORDON WETHERELL
GOVERNOR**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Anti-Money Laundering Regulations 2007.

Part 1 defines certain terms used in the Regulations and sets out the scope of the Regulations.

Part 2 sets out the identification procedure to be established and maintained by a person carrying on a financial business and sets out certain exceptions to the identification procedure.

Part 3 requires a person carrying on a financial business to keep the necessary records of all transactions for a minimum of 5 years and provides for the Commission or Reporting Authority may specify a longer period than 5 years.

A financial business must take appropriate measures for the purposes of making employees whose duties relate to the provision of relevant business aware of—

- (a)* the anti-money laundering and counter-terrorist financing policies, procedures, systems and controls maintained by the financial business in accordance with these Regulations or the Code;
- (b)* the law of the Islands relating to money laundering and terrorist financing offences; and
- (c)* these Regulations, the Code and any Guidance issued by the Commission or a supervisory authority.

Part 4 requires a financial business to appoint a fit and proper person as its Money Laundering reporting Officer and a fit and proper person as its Money Laundering Compliance Officer.

The Regulations also provide penalties for the contravention of any provision of the Regulations.