

LEGAL NOTICE NO. 213

REPUBLIC OF TRINIDAD AND TOBAGO

THE PROCEEDS OF CRIME ACT, CHAP. 11:27

REGULATIONS

MADE BY THE MINISTER OF FINANCE UNDER SECTION 56 OF THE
PROCEEDS OF CRIME ACT

THE FINANCIAL OBLIGATIONS REGULATIONS, 2009

PART I

PRELIMINARY

1. These Regulations may be cited as the Financial Obligations Citation
Regulations, 2009.

2. (1) In these Regulations—

Interpretation

“applicant” or “applicant for business” means a person seeking to form a business relationship, or carry out a one-off transaction, with a financial institution or listed business;

“business relationship” means an arrangement between—

- (a) a financial institution and a customer; or
- (b) a listed business and a customer, for the carrying out of financial transactions on a regular basis;

“Central Bank” means the bank established and incorporated under the Central Bank Act;

Chap. 79:02

“Compliance Officer” means the officer designated in accordance with regulation 3, as the anti-money laundering compliance officer, for any financial institution or listed business;

“Constitution” means the Constitution of the Republic of Chap. 1:01
Trinidad and Tobago;

“cross-border wire transfer” in relation to the transfer of money, means a single wire transfer in which the originator and beneficiary of the transfer are located in different countries or any chain of such transfers;

“Director” means the Director of the FIU;

“domestic wire transfer” in relation to the transfer of money, means any wire transfer in which the originator and beneficiary are located in Trinidad and Tobago;

“exempt customer” means—

(a) a public authority; or

(b) a financial institution or other business in a country, the laws of which sufficiently comply with the revised Forty Recommendations of the Financial Action Task Force;

“Financial Action Task Force” means the task force established by the Group of Seven, to develop and promote national and international policies to combat money laundering and terrorist financing;

“financial institution” has the meaning assigned to it in the Act; and “institution” has the corresponding meaning;

“FIU” means the Financial Intelligence Unit established under the Financial Intelligence Unit of Trinidad and Tobago Act, 2009;

“listed business” means any business activity or profession listed in the First Schedule to the Act;

“Minister” means the member of the Cabinet to whom responsibility for finance is assigned;

“money or value transfer service business” means a financial service that accepts cash, cheques, other monetary instruments or other stores of value, in one location and pays a corresponding sum in cash or other form to a beneficiary in another location, by means of a communication, message, transfer or through a clearing network to which the money or value transfer service belongs;

“one-off transaction” means any transaction other than one carried out in the course of an existing business relationship;

“originator” means a person who holds or places an account with a financial institution or listed business or the person who places the order with the financial institution or listed business for the transmission of a wire transfer;

“public authority” means—

- (a) Parliament;
- (b) the Supreme Court of Judicature established under the Constitution, the Industrial Court, established under the Industrial Relations Act, the Tax Appeal Board established under the Tax Appeal Board Act, the Environmental Commission established under the Environmental Management Act, the Land Tribunal established under the Land Tribunal Act or any other Superior Court of record;
- (c) a court of summary jurisdiction;
- (d) a Ministry or a department of a Ministry;
- (e) a Service Commission established under the Constitution;
- (f) the Tobago House of Assembly, established under the Constitution, the Executive Council of the Tobago House of Assembly or a division of the Tobago House of Assembly;
- (g) a municipal corporation established under the Municipal Corporations Act;
- (h) a regional health authority established under the Regional Health Authorities Act;
- (i) a body created by statute, responsibility for which is assigned to a member of the Cabinet;
- (j) a company incorporated or continued under the Companies Act, which is owned or controlled by the state, other than a company licensed under the Financial Institutions Act, 2008; or
- (k) a body corporate or unincorporated entity—
 - (i) in relation to any function which it exercises on behalf of the State; or

- (ii) which is supported, directly or indirectly, by funds appropriated by Parliament and over which government is in a position to exercise control;

“Supervisory Authority” has the meaning assigned to it in the Act;

“the Act” means the Proceeds of Crime Act, 2000; and

“wire transfer” means any transaction carried out on behalf of an originator, who may be either a natural or a legal person through a financial institution or a listed business, by electronic means, with a view to making money available to a beneficiary at another financial institution or listed business.

(2) In these Regulations, a reference to an amount in Trinidad and Tobago dollars, includes a reference to an equivalent amount in any other currency.

PART II

TRAINING OBLIGATIONS AND COMPLIANCE PROGRAMME OF A FINANCIAL INSTITUTION OR LISTED BUSINESS

Compliance
Officer

3. (1) Subject to subregulations (2) and (3), a financial institution or listed business shall for the purpose of securing compliance with section 55(3) of the Act and these Regulations, designate a manager or official employed at managerial level as the Compliance Officer of that institution or business.

(2) Where the financial institution or listed business, employs five persons or less, the employee who occupies the most senior position, shall be the Compliance Officer.

(3) Where the financial institution or listed business is an individual who neither employs nor acts in association with another person, that individual shall be the Compliance Officer.

(4) The financial institution or listed business shall be responsible for training the Compliance Officer in accordance with regulation 5.

4. (1) The Compliance Officer shall—

Functions
of the
compliance
officer

- (a) ensure that the necessary compliance programme procedures and controls required by these regulations are in place;
- (b) co-ordinate and monitor the compliance programme to ensure continuous compliance with these regulations;
- (c) receive and review reports of suspicious transactions, or suspicious activities made by the staff of the institution or business and report the same to the FIU in accordance with the Act and any guidelines issued by the Central Bank, the FIU and any Supervisory Authority;
- (d) maintain records of these reports; and
- (e) function as the liaison official with the FIU, where the institution or business executes the instructions of the Director.

(2) A financial institution or listed business shall seek the approval of the FIU, for the appointment of the Compliance Officer, designated under regulation 3(1).

(3) The identity of the Compliance Officer shall be treated with strictest confidence by the members of staff of the institution or business.

(4) For the purposes of these regulations, the Central Bank, the FIU and any other Supervisory Authority may issue guidelines to financial institutions, indicating the circumstances that may be considered, in determining whether a transaction or activity is suspicious.

5. (1) The financial institution or listed business shall utilize best practices of the industry, to determine its staff recruitment policy, with the use of which, staff of the highest levels of integrity and competence shall be hired and retained.

Recruitment
of staff

(2) The names, addresses, position titles and other official information pertaining to staff appointed or recruited by the financial institution or listed business shall be maintained for a period of six years and made available to the Central Bank, the FIU and any Supervisory Authority when necessary.

(3) The financial institution or listed business, shall ensure, to the extent permitted by the laws of the relevant country, that similar

recruitment policies are followed by its branches, subsidiaries and associate companies abroad, especially in those countries which are not sufficiently compliant with the recommendations of the Financial Action Task Force.

Training of
staff

6. (1) The financial institution or listed business shall make arrangements for the training of the directors, and all members of its staff to equip them—

(a) to perform their obligations under—

- (i) the Act;
- (ii) the Financial Intelligence Unit of Trinidad and Tobago Act, 2009;
- (iii) these regulations; and
- (iv) guidelines on the subject of money laundering issued under regulation 4(4); and

(b) to understand the techniques for identifying any suspicious transactions or suspicious activities.

(2) The training required by subsection (1), shall be given in such a manner that employees at all levels of the financial institution or listed business, would become capable of detecting suspicious transactions and other suspicious activities.

(3) The financial institution or listed business shall keep records of the training programmes administered to its employees.

Compliance
Programme

7. (1) A compliance programme established under these regulations shall contain be appropriate for the respective financial institutions and listed business and shall contain the following measures:

- (a) procedures governing customer identification, documentation and verification of customer information and other customer due diligence measures;
- (b) methods for the identification of suspicious transactions and suspicious activities;
- (c) guidelines for the internal reporting of suspicious transactions and suspicious activities;
- (d) guidelines for adopting the risk-based approach to monitoring financial activities, which would include categories of activities or business that are considered to be of a high risk;

- (e) guidelines for—
- (i) external and internal independent testing for compliance; and
 - (ii) an effective risk-based audit function to evaluate the compliance programme;
- (f) such other procedures for internal control and communication as may be appropriate for the purposes of forestalling money laundering;
- (g) procedures for retention of transaction records and other information; and
- (h) a list of countries which are non-compliant, or do not sufficiently comply with the recommendations of the Financial Action Task Force.

8. (1) In support of its compliance programmes, a financial institution or listed business shall establish internal reporting rules which would—

Internal
reporting to
Compliance
Officer

- (a) mandate any person employed in a financial institution or with a listed business, who knows or suspects that a transaction involves the use of, or the proceeds of a specified offence, to report the matter to the Compliance Officer in writing and keep copies of the said report;
- (b) mandate the Compliance Officer to consider the report in the light of any relevant information which is available to him and any such guidelines issued by the Central Bank, the FIU or other Supervisory Authorities, under regulation 4(1)(c) and to determine whether it gives rise to such knowledge or suspicion; and
- (c) make it obligatory for the Compliance Officer to report the activity or suspicious transaction to the FIU within the period stipulated in the Act, where he makes such a determination.

(2) The financial institution or listed business shall also ensure that the Compliance Officer and other employees, have timely access to customer identification data and other records and relevant information, to enable them to produce reports in a timely manner.

9. (1) Regulation 8 shall not apply, where a listed business is a legal professional adviser and the knowledge or suspicion is based on advice or information or other matters which came to him in privileged circumstances.

Professional
Legal Advisor

(2) Information or any other matter comes to a professional legal adviser in privileged circumstances, if it is communicated or given to him or given—

- (a) by his client or a representative of the client, in connection with the provision of legal advice to him;
- (b) by another person or his representative, seeking legal advice from the adviser; or
- (c) in connection with legal proceedings or contemplated legal proceedings.

(3) This regulation does not apply in the case of information or other matters which are communicated or given with a view to furthering a criminal purpose known to the professional legal adviser.

Auditors to
monitor
programme

10. (1) The implementation of the compliance programme shall be monitored by the internal and external auditors engaged by the financial institution or listed business.

(2) In monitoring the compliance programme—

- (a) the external auditor shall evaluate compliance with relevant legislation and guidelines and shall submit periodic reports and recommendations to the Board of Directors of the financial institution or listed business and to the Central Bank, the FIU and other Supervisory Authorities;
- (b) the internal auditor shall ensure that policies, procedures and systems are in compliance with the requirements of these regulations and that the level of transaction testing, is in line with the risk profile of the customer.

(3) Where the financial institution or listed business does not engage the services of an external or internal auditor, the Supervisory Authority shall assign a competent professional, to perform the functions outlined in subregulation (2).

(4) The cost of the services of the competent professional assigned by the Supervisory Authority to monitor the compliance programme under subregulation (2), shall be met by the Supervisory Authority.

(5) All auditors or other competent professionals engaged for the purposes of these regulations, shall be specifically trained to undertake their functions.

PART III

CUSTOMER DUE DILIGENCE

11. (1) Where a financial institution or listed business undertakes a financial transaction— a Identification procedure

- (a) in the course of a business relationship;
- (b) pursuant to an agreement to form a business relationship;
- (c) as a one-off or occasional transaction; or
- (d) as two or more one-off transactions, each of which is less than ninety thousand dollars but together the total value is ninety thousand dollars or more and it appears, whether at the outset of each transaction or subsequently, that the transactions are linked, the financial institution or listed business shall conduct due diligence in accordance with this Part and shall make rules for so doing, in accordance with the categories of risk established under regulation 7.

(2) Where in respect of any of the circumstances mentioned at paragraphs (a) to (d) of subregulation (1), the financial institution or listed business knows or has reasonable grounds to suspect that the funds used for a transaction are the proceeds of money laundering or any other specified offence, the institution or business shall apply the procedures or policies identified hereunder.

(3) The financial institution or listed business shall—

- (a) request evidence of the identity of the customer in accordance with its compliance program established under regulation 7(a) and record all the information received; and
- (b) implement any other customer identification policies and procedures required to prevent money laundering.

(4) Where in the course of a business relationship or one-off transaction, a financial institution or listed business undertakes a transaction with a financial institution or other persons from another country, contact shall be made with appropriate persons in that country, for satisfactory evidence of the identity of the customer before completing the transaction.

(5) Where satisfactory evidence of identity has not been obtained, the business relationship or one-off transaction shall not proceed any further and the matter shall be reported to the Compliance Officer in accordance with regulation 7 (1)(b), (c) and (d).

(6) Where the person to whom satisfactory evidence of identity is presented, knows or has reasonable grounds for believing that the applicant for business is a money or value transfer service operator,

satisfactory evidence of identity shall also include documents identifying the official name of the business and its owners or directors in accordance with this Part.

(7) For the purposes of this regulation, “satisfactory evidence of identity” means—

- (a) in relation to an individual, evidence that is reasonably capable of establishing or does in fact establish that the applicant for business is the person whom he claims to be; and
- (b) in relation to a corporation or other business arrangement, evidence that the corporation or other business exists, and evidence of the identity of its directors, partners or persons of like status in the business arrangement.

Beneficial
owner

12. (1) A financial institution or listed business shall also record the identity of the beneficial owner of any accounts held at the financial institution or listed business and for that purpose, shall request original identification documents, data or other information from an applicant for business.

(2) Where the beneficial owner of an account is a legal person or a person acting pursuant to a legal arrangement, the financial institution or listed business shall—

- (a) verify the identity of that person;
- (b) verify that the person is authorized to conduct business through the account; and
- (c) record the ownership structure of the beneficial owner and the purpose and intended nature of the business relationship between the legal and beneficial owners of the accounts.

(3) In furtherance of subregulation (2), a financial institution or listed business shall conduct on-going due diligence on or continuous review of the business relationship, and monitor transactions undertaken in the course of the relationship, to—

- (a) maintain up to date records of information; and
- (b) ensure consistency with the business and risk profile of the applicant and where necessary, its source of funds.

(4) Where a financial institution or listed business, having monitored transactions undertaken in the course of a business relationship, knows or has reasonable grounds to believe that suspicious activities or suspicious transactions have taken place, these activities or transactions shall be reported to the FIU.

(5) For the purpose of this regulation, “beneficial owner” means the person who ultimately owns and controls an account, or who exercises ultimate control over a legal person or arrangement.

13. (1) Where an applicant for business acts or appears to act as a Representative of a financial institution or listed business, the recipient of the application shall—

- (a) request a written assurance from the applicant, that the identity of the principal, has been recorded in accordance with procedures maintained by the applicant; and
- (b) take the measures necessary to ensure that the applicant is legally authorized to act for the principal.

(2) The financial institution or listed business shall take reasonable steps to ensure that identification documents provided by an applicant are authentic and are available to the financial institution or listed business upon request or without delay.

(3) The identity of the principal referred to in this regulation, shall be ascertained by reference to at least two forms of identification from among those listed in regulations 15 and 16.

(4) In the case where the applicant for business acts or appears to act for a principal, who or which is based in another country, the financial institution or listed business may process a transaction, under this regulation, only where there are reasonable grounds for believing that the applicant for business is—

- (a) regulated by an overseas supervisory authority; or
- (b) based or incorporated in a country where there are laws that give effect to the revised Forty Recommendations and Nine Special Recommendations (on Terrorist Financing) of the Financial Action Task Force.

14. (1) Identification procedures under this Part do not require a financial institution or listed business to take steps to obtain evidence of the identity of a person in any of the following circumstances:

- (a) where the financial institution or listed business carries out a one-off transaction with a third party under regulation 13, pursuant to an introduction effected by a person who has provided a written assurance that evidence of the identity of the third party introduced by him, has been obtained and is recorded under procedures maintained by him and the person identifies the third party;
- (b) in connection with a pension scheme taken out by virtue of a person's occupation or a contract of employment;
- (c) where there is a contract of long-term insurance or where a contract of insurance contains no surrender clause and may not be used as collateral for a loan; or
- (d) an applicant for business is an exempt customer and a financial institution or listed business has recorded the basis on which the applicant satisfies the exemptions.

New
business
relationship

15. (1) The financial institution or listed business shall on initiating a business relationship with an applicant, obtain relevant identification records of such as follows:

- (a) full name of the applicant(s);
- (b) permanent address and proof thereof;
- (c) date and place of birth;
- (d) nationality;
- (e) nature and place of business/occupation where applicable, occupational income;
- (f) signature;
- (g) purpose of the proposed business relationship or transaction and source of funds; and
- (h) any other information deemed appropriate by the financial institution or listed business.

(2) A valid photo-bearing identification shall also be obtained or examined, for example, a passport, a national identification card or a license to drive a motor vehicle.

(3) Where the business relationship involves a foreign customer a reference shall be sought from the foreign customer's bank.

(4) Where original documents are not available, copies shall be acceptable only where they are certified by and identification documents which are easily obtainable (e.g., birth certificates) shall not be accepted as the sole means of identification.

Identify of
a business
customer

16. (1) The requirements outlined in regulation 15, with appropriate adaptations, may also be applicable to a business customer and the financial institution or listed business shall verify the identity of the directors and other officers of a company, partners of a partnership, account signatories, beneficial owners, and sole traders by means of documentary evidence.

(2) In addition, the financial institution or listed business shall obtain, to the extent relevant to a proposed business relationship or transaction—

- (a) Certificate of Incorporation or Certificate of Continuance;
- (b) Articles of Incorporation;
- (c) a copy of the by-laws, where applicable;
- (d) management accounts for the last three years for self-employed persons and businesses which have been in operation for more than three years; and
- (e) information on the identity of shareholders holding more than five per centum of the paid up share capital of the company.

(3) In the event that an applicant for business cannot satisfy the requirements of subregulation (2)(d), the financial institution may request other forms of proof of the integrity of the source of funds to be used for the transaction.

17. (1) Where an applicant for business is a trustee, nominee or Trust fiduciary customer, in addition to the requirements outlined in regulation 15, the financial institution or listed business shall obtain the following information of:

- (a) evidence of the appointment of the trustee by means of a certified copy of the Deed of Trust;
- (b) the nature and purpose of the trust; and
- (c) verification of the identity of the trustee.

(2) In this section “trustee” includes the settlor, protector, person providing the trust funds, controller or any person holding power to appoint or remove the trustee.

18. (1) Where at any time, a financial institution or listed business is in doubt about the veracity of any information previously given by a customer, due diligence procedures shall be performed and where there are discrepancies in the information previously provided, the FIU shall make every effort to obtain the correct information.

(2) Where such information cannot be verified, the financial institution or listed business shall discontinue any business relationship with the customer, and report the matter to the FIU.

19. (1) A financial institution or listed business shall not keep anonymous accounts or accounts in fictitious names and shall identify and record the identity of customers, in accordance with this Part.

(2) Where a new account is opened or a new service is provided by a financial institution and the customer purports to be acting on his own behalf but the financial institution suspects otherwise, the institution shall verify the true identity of the beneficial owner and if it is not satisfied with the response of the customer, it shall terminate all relations with that customer forthwith.

20. (1) In this regulation “politically exposed person” means a person who is or was entrusted with important public functions in a foreign country such as—

- (a) a current or former senior official in the executive, legislative, person administrative or judicial branch of a foreign government, whether elected or not;

- (b) a senior official of a major political party;
- (c) a senior executive of a foreign government-owned commercial enterprise;
- (d) a senior military official;
- (e) an immediate family member of a person mentioned in paragraphs (a) to (d) meaning the spouse, parents, siblings or children of that person and the parents, siblings and additional children of the person's spouse;
- (f) any individual publicly known or actually known to the relevant financial institution to be a close personal or professional associate of the person mentioned in paragraphs (a) to (d).

(2) A financial institution or listed business shall put appropriate measures in place to determine whether an applicant for business is a politically exposed person.

(3) Where the applicant for business has been found to be a politically exposed person, in addition to the identification data required by regulation 15, further due diligence measures shall be conducted in accordance with this regulation.

(4) The permission of a senior management official of the financial institution or listed business is required before a business relationship with a politically exposed person.

(5) A financial institution or listed business shall also take reasonable measures to determine the source of wealth and the source of funds of the politically exposed person and where the institution or business has entered a business relationship with the person, it shall conduct enhanced on-going monitoring of that relationship.

Correspon-
dent
banking

21. (1) In this regulation, "correspondent banking" means, the provision of banking services by one bank in Trinidad and Tobago ("the correspondent bank") to another bank ("the respondent bank") in a foreign country.

(2) A correspondent bank shall collect sufficient information about its respondent bank to—

- (a) understand fully the nature of the business which it is required to undertake and shall only establish correspondent accounts with a foreign bank, after determining that it is effectively supervised by the competent authorities in its jurisdiction; and

(b) assess the anti-money laundering controls of the respondent bank.

(3) A correspondent bank shall also—

(a) obtain approval from senior management before establishing new correspondent relationships;

(b) record the respective responsibilities of the correspondent and the respondent banks;

(c) ensure that the respondent bank undertakes to provide relevant customer identification data to the correspondent bank upon request;

(d) with respect to “payable through accounts”, satisfy itself that the respondent bank has verified the identity of and performed on-going due diligence on the customer.

(4) A correspondent bank shall also ascertain whether the respondent bank has been the subject of money laundering investigations or other regulatory action in the country in which it is incorporated or in any other country.

(5) A correspondent bank shall put special know-your-customer policies in place to address the specific risks associated with non face-to-face business relationships or transactions.

22. (1) A bank shall not to enter or continue a correspondent banking relationship with a bank which is— Shell banks

(a) incorporated in a jurisdiction in which it has no physical presence; or

(b) which is unaffiliated with a financial group regulated by a Supervisory Authority in a country where the Recommendations of the Financial Action Task Force are applicable.

(2) A financial institution or listed business shall ensure that the respondent financial institution or business in a foreign country, does not permit a shell bank to use its accounts.

(3) In this regulation, “affiliate” means a branch, a holding company or a subsidiary company.

23. (1) A financial institution or listed business shall pay special attention to any money laundering patterns that may arise from— Technological developments

(a) new or developing technology that might favor anonymity; and

(b) use of such technology in money laundering offences, and shall take appropriate measures to treat with such patterns.

(2) A financial institution or listed business shall ensure that the respondent financial institution or business, in a foreign country does not permit shell banks to use its accounts.

PART IV

CUSTOMER DUE DILIGENCE PROVISIONS FOR INSURANCE COMPANIES

- General requirements 24. (1) An insurance company shall undertake its customer identification procedures in respect of a party entering into an insurance contract, but where the party acts or appears to act on behalf of a principal, the true nature of the principal should be established and appropriate enquiries made, especially if the policy holder is accustomed to act on the instructions of the principal.
- (2) If it is necessary for sound business reasons to enter into an insurance contract before enquiries can be completed, this action should be subject to stringent controls to ensure that any funds payable under the contract are not passed to third parties before enquiries are completed.
- (3) Any decision to enter into a contract in the circumstances of subregulation (2), shall be made by a senior manager and recorded in writing.
- Verification of customer identity 25. (1) An insurance company undertaking verification of the identity of customer identity of the customer, shall establish to its reasonable satisfaction that every party relevant to the application for insurance, actually exists.
- (2) Where there is a large number of parties to the application for example, in the case of group life pensions, the requirement of this regulation may be fulfilled by carrying out identification procedures on a limited group only, such as the principal shareholder, or the main directors of a company.
- (3) Where a transaction involves an insurer and an intermediary, each party shall consider its own position separately, to ensure that its own obligations regarding identification and records are duly discharged.
- Reinsurers 26. Prior to entering into any reinsurance contract, the insurance company shall verify the identity of the customer, to ensure that the monies payable under the re-insurance contract, are paid only to bona fide re-insurers at rates commensurate with the risks that were underwritten.
- Payment of claims 27. Where claims and other monies are to be paid to persons, partnerships, and other forms of business arrangements, the identity of the proposed recipient of those payments shall be the subject of identification procedures.
- Payments on surrender of policy 28. Whether a transaction is—
- (a) a one-off transaction; or
- (b) carried on in the course of a business relationship,
- and the value of the transaction is ninety thousand dollars or more the identity of the customer shall be verified before the insurance company surrenders the proceeds of customer.

29. Verification of the identity of a party to an insurance contract is ^{Exception} not required—

- (a) where the applicant for an insurance contract is a financial institution or listed business operating in Trinidad and Tobago and is regulated by a supervisory authority;
- (b) where an insurance company offers the facility of money due to the insured in respect of one policy of insurance, to fund the premium payments for another policy of insurance and the insured uses that facility.

30. In this Part, transactions which are separated by an interval of ^{Transactions} three months or more are not required to be treated as linked ^{not linked} transactions.

PART V

RECORD KEEPING

31. (1) Subject to regulations 33(2) and 34 a financial institution or ^{Records} listed business, shall retain records of—

- (a) all domestic and international transactions;
- (b) identification data obtained through the customer due diligence process,

in electronic or in written form, for a period of six years to enable the financial institution or listed business to comply with lawful requests for information from auditors, other competent authorities and law enforcement authorities that request these records, for purposes of criminal investigations or the prosecution of persons charged with criminal offences.

(2) The period referred to in subregulation (1), may be extended at the request of the FIU or other Supervisory Authority.

(3) Transaction records referred to in subregulation (1), shall be—

- (a) kept in the format specified by the FIU, and with sufficient detail to permit reconstruction of individual transactions; and
- (b) made available to the FIU, upon its request.

32. (1) The records referred to in regulation 31, shall contain the ^{Record} following: ^{keeping} ^{procedures}

- (a) all original documents and details of a transaction, including the amount of and type of currency used for the transaction carried out by the financial institution or listed business, in the course of a business relationship or a one-off transaction to provide the evidence necessary for the prosecution of criminal activity;

(b) in the case of evidence of identity obtained in accordance with regulations 15, 16 and 17—

- (i) a copy of that evidence;
- (ii) the address of the place where a copy of that evidence may be obtained; or
- (iii) information enabling the evidence of identity to be obtained a second time, but only where it is not reasonably practicable for the financial institution or listed business to comply with subregulation (i) or (ii).

(2) The period of six years for which the records referred to in subregulation 31(1), shall be kept is determined as follows:

- (a) in the case where a financial institution or listed business and an applicant for business have formed a business relationship, at least six years from the date on which the relationship ended; or
- (b) in the case of a one-off transaction, or a series of such transactions, at least six years from the date of the completion of the one-off transaction or, as the case may be, the last of the series of such transactions.

(3) Where a financial institution or listed business is an appointed representative, its principal shall ensure compliance with this regulation, in respect of any financial transaction carried out by the financial institution or listed business for which the principal has accepted responsibility.

Large
transactions
records,
drafts

33. (1) The financial institution or listed business which—

- (a) receives cash;
- (b) receives or transfers funds by way of cheques, drafts, money orders or travellers' cheques;
- (c) receives or transfers funds by way of incoming or outgoing cross-border wire transfers; or
- (d) transfers funds through the use of any electronic, magnetic or optical device,

in an amount in excess of ninety thousand dollars, shall keep and retain for a period of at least six years, a separate record of large transactions that includes the information outlined in regulations 15, 16 or 17 as the case may be and shall undertake continuous due diligence in respect of these transactions.

(2) Notwithstanding subregulation (1), the FIU may set other threshold limits in excess of two hundred and fifty thousand dollars, for special record keeping and may instruct the financial institution or listed business, to maintain records in such a format as the FIU thinks necessary, to facilitate its analyses of those large transactions.

34. (1) The information listed in regulation 35 concerning the ^{Wire} originator and recipient of the funds transferred, shall be included on all ^{transfers} domestic and cross border wire transfers.

(2) A financial institution or listed business that participates in a business transaction via wire transfer shall relay the identification data about the originator and recipient of the funds transferred, to any other financial institution participating in the transaction.

(3) Where the originator of the wire transfer does not supply the transfer identification data requested by the financial institution or listed business, the transaction shall not be effected and a suspicious activity report shall be submitted to the FIU.

(4) All wire transfers above the amount of six thousand dollars shall be reported to the FIU as a suspicious transaction.

35. (1) Domestic and cross-border wire transfers shall be ^{Information} accompanied by accurate and meaningful identification data on the ^{required for} originator of the transfer, which shall be kept in a format determined by the FIU.

(2) Information accompanying a cross-border transfer shall consist of—

- (a) the name and address of the originator of the transfer;
- (b) the financial institution where the account exists;
- (c) the number of the account and in the absence of an account, a unique reference number; and
- (d) either a national identification number or a passport number.

(3) Information accompanying a domestic wire transfer shall be kept in a format which enables it to be produced immediately, to the FIU.

(4) The financial institution or listed business shall put provisions in place to identify wire transfers lacking complete originator information so that the lack of complete originator information shall be considered as a factor in assessing whether a wire transfer is or related transactions are suspicious and thus required to be reported to the FIU.

36. A wire transfer from one financial institution to another, is ^{ex- Exemption} exempted from the provisions of this Part, where both the originator and beneficiary are financial institutions acting on their own behalf.

Continuous analysis 37. Where a suspicious transaction or suspicious activity report has been submitted to the FIU, as a result of which there is an ongoing analysis, the financial institution shall—

- (a) retain the related records for the period requested by the FIU or until otherwise ordered by the Court; and
- (b) co-operate fully with any instructions given by the Director or such other person as he may appoint.

Retrospective due diligence 38. Every financial institution or listed business shall conduct due diligence on all existing accounts within a time-frame agreed upon, with the FIU.

Register of enquiries 39. (1) The financial institution or listed business shall maintain a register of all enquiries made to them by any law enforcement authority or other local or foreign authorities acting under powers provided by the relevant laws or their foreign equivalent.

(2) The register shall be kept separate from other records and contain as a minimum the following details:

- (a) the date and nature of the enquiry;
- (b) the name and agency of the enquiring officer; and
- (c) the powers being exercised.

PART VI

SUPERVISORY AUTHORITY

Delegation by Supervisory Authority 40. A Supervisory Authority, may with the approval of the Director, delegate its function to any person who is suitably qualified or experienced in the operations of a specific type of financial institution or listed business.

Reports to the FIU 41. (1) Where a Supervisory Authority, in light of any information obtained by it, knows or has reasonable grounds for believing that a financial institution or listed business has or may have been engaged in money laundering, the Supervisory Authority shall disclose the information or belief to the FIU as soon as is reasonably practicable.

(2) Subject to subregulation (4), where any person receives information through which he knows or has reasonable grounds for believing that a financial institution or listed business has or may have been engaged in money laundering or other specified offence, that person shall disclose the information to the FIU.

(3) Where any person, exercising delegated authority under section 39, in the light of any information obtained by him, knows or has reasonable grounds for believing that someone has or may have been engaged in money laundering, that person shall, as soon as is reasonably practicable, disclose the knowledge or belief either to the FIU or to the Supervisory Authority by whom he was appointed or authorized.

(4) Where information has been disclosed to the FIU under this regulation, the FIU may only disclose the information in connection with the investigation of an offence under any law or for the purpose of any proceedings relating to the offence.

(5) A disclosure made under this regulation shall not be construed as a breach of any restriction on the disclosure of information, however that restriction may have been imposed.

PART VII

OFFENCE AND PENALTIES

42. A financial institution or listed business which does not comply with any of its obligations under regulations 3, 7, 8 and 10(2), or Parts III, IV and V of these regulations, commits an offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act.

43. (1) Where a company commits an offence under these Regulations, any officer, director or agent of the company—

- (a) who directed, authorized, assented to, or acquiesced in the commission of the offence; or
- (b) to whom any omission is attributable,

is a party to the offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act whether or not the company has been prosecuted or convicted.

(2) Where a partnership commits an offence under these regulations, and it is proved that the partner acted according to paragraph (a) or (b) of subregulation (1), the partner and the partnership are liable on summary conviction or on conviction on indictment to the penalty prescribed in section 57 of the Act.

(3) Where an unincorporated association, other than a partnership, commits an offence and it is proved that an officer or member of the governing body acted according to paragraph (a) or (b) of subregulation (1), that officer or member as well as the unincorporated body, commits an offence and is liable on summary conviction or on conviction on indictment to the penalty prescribed in section 57 of the Act.

(4) If the affairs of a body corporate are managed by its members, subregulation (1), applies in relation to the acts and omission of a member in connection with his functions of management, as if he were a director of the body.

(5) In this regulation—

“partner” includes a person purporting to act as a partner; and

“officer”, in relation to a body corporate, means a director, manager, secretary, Chief Executive Officer, member of the committee of management or a person acting in such a capacity.

Prosecutions 44. Proceedings for an offence under these Regulations may not be instituted without the approval of the Director of Public Prosecutions.

Dated this 9th day of October, 2009.

L. SAITH
Acting Minister of Finance

Laid in the House of Representatives this day of ,
2009.

Clerk of the House

Laid in the Senate this day of , 2009.

Clerk of the Senate