

**PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING) REGULATIONS 2008**

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**BR 77/2008**

**PROCEEDS OF CRIME ACT 1997**

**1997 : 34**

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SCHEDULE

In exercise of the powers conferred upon the Minister responsible for Justice by section 49(3) of the Proceeds of Crime Act 1997 and section 12A of the Anti-Terrorism (Financial and Other Measures) Act 2004, the following Regulations are made:

**PART 1  
PRELIMINARY**

**Citation and commencement**

1 These Regulations may be cited as the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette and the Minister may appoint different days for different provisions.

**Interpretation**

2 (1) In these Regulations —

“AML/ATF regulated financial institution” has the meaning given in paragraph (2);

“appointed stock exchange” means a stock exchange appointed by the Minister of Finance under section 2 (9) of the Companies Act 1981;

“banking institution” means a person carrying on deposit-taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999;

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

“business relationship” means a business, professional or commercial relationship between a relevant person and a

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customer, which is expected by the relevant person when contact is first made between them to have an element of duration;

“customer due diligence measures” has the meaning given by regulation 5;

“firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate and a partnership or other unincorporated association;

“independent professional” means a professional legal adviser or accountant being a firm or sole practitioner in independent practice who by way of business provides legal or accountancy services to other persons when participating in financial or real property transactions concerning —

- (a) buying and selling real property;
- (b) managing of client monies, securities and other assets;
- (c) management of bank, savings or securities accounts;
- (d) organisation of contributions for the creation, operation or management of companies;
- (e) creation, operation or management of legal persons or arrangements, and buying and selling business entities

and, for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction;

“money laundering” has the meaning given in section 7(1) of the Proceeds of Crime Act 1997;

“occasional transaction” means a transaction (carried out other than as part of a business relationship) amounting to \$15,000 or more, whether the transaction is carried out in a single operation or several operations which appear to be linked;

“professional accountant” has the meaning given in section 42A of the Proceeds of Crime Act 1997;

“professional legal adviser” has the meaning given in section 42A of the Proceeds of Crime Act 1997;

“relevant person” means the person to whom in accordance with regulation 4, these Regulations apply;

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“supervisory authority” means the Bermuda Monetary Authority in relation to relevant persons that are AML/ATF regulated financial institutions; or a professional body designated by the Minister under any enactment in relation to relevant persons regulated by it;

“terrorist financing” means an offence under section 5, 6, 7 or 8 of the Anti-Terrorism (Financial and Other Measures) Act 2004;

(2) “AML/ATF regulated financial institution” means a person who —

- (a) carries on deposit-taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999;
- (b) carries on investment business within the meaning of section 3 of the Investment Business Act 2003;
- (c) is an insurer (and not a reinsurer) registered under section 4 of the Insurance Act 1978 who carries on long term business falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (d) is an insurance manager or broker registered under section 10 of the Insurance Act 1978 in so far as he acts as a manager or broker in connection with long term business (other than reinsurance business) falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (e) carries on the business of a fund administrator within the meaning of section 2(2) of the Investment Funds Act 2006;
- (f) carries on money service business within the meaning of section 20AA of the Bermuda Monetary Authority Act 1969;
- (g) carries on trust business within the meaning of section 9(3) of the Trusts (Regulation of Trust Business) Act 2001 and is not otherwise exempted by or under paragraph 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002; or
- (h) is the operator of an investment fund within the meaning of section 2 of the Investment Funds Act 2006.

*[Regulation 2 amended by 2008:49 s.39(4) effective 1 January 2009]*

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**Meaning of beneficial owner**

3 (1) In the case of a body corporate, “beneficial owner” means any individual who—

- (a) as respects any body other than a company whose securities are listed on an appointed stock exchange, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or
- (b) as respects any body corporate, otherwise exercises control over the management of the body.

(2) In the case of a partnership, “beneficial owner” means any individual who—

- (a) ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership; or
- (b) otherwise exercises control over the management of the partnership.

(3) In the case of a trust, “beneficial owner” means—

- (a) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;
- (b) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;
- (c) any individual who has control over the trust.

(4) In paragraph (3)—

“specified interest” means a vested interest which is—

- (a) in possession or in remainder or reversion; and
- (b) defeasible or indefeasible;

“control” means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—

- (a) dispose of, advance, lend, invest, pay or apply trust property;
- (b) vary the trust;

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- (c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
  - (d) appoint or remove trustees;
  - (e) direct, withhold consent to or veto the exercise of a power such as is mentioned in subparagraph (a), (b), (c) or (d).
- (5) For the purposes of paragraph (3)—
- (a) where an individual is the beneficial owner of a body corporate which is entitled to a specified interest in the capital of the trust property or which has control over the trust, the individual is to be regarded as entitled to the interest or having control over the trust; and
  - (b) an individual does not have control solely as a result of—
    - (i) his consent being required in accordance with section 24(1) (c) of the Trustee Act 1975 (power of advancement); or
    - (ii) the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust.
- (6) In the case of a legal entity or legal arrangement which does not fall within paragraph (1), (2) or (3), “beneficial owner” means—
- (a) where the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from at least 25% of the property of the entity or arrangement;
  - (b) where the individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;
  - (c) any individual who exercises control over at least 25% of the property of the entity or arrangement.
- (7) For the purposes of paragraph (6), where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property of the entity or arrangement, the individual is to be regarded as benefiting from or exercising control over the property of the entity or arrangement.

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(8) In the case of an estate of a deceased person in the course of administration, “beneficial owner” means the executor, original or by representation, or administrator for the time being of a deceased person.

(9) In any other case, “beneficial owner” means the individual who ultimately owns or controls the customer or on whose behalf a transaction is being conducted.

(10) In this regulation—

“arrangement”, “entity” and “trust” means an arrangement, entity or trust which administers and distributes funds.

**Application of Regulations**

4 These Regulations apply to the following persons acting in the course of business carried on by them in or from Bermuda —

- (a) AML/ATF regulated financial institutions;
- (b) independent professionals.

*[Regulation 4 amended by 2008:49 s.39(5) effective 1 January 2009]*

**PART 2  
CUSTOMER DUE DILIGENCE**

**Meaning of customer due diligence measures**

5 “customer due diligence measures” means —

- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and
- (c) obtaining information on the purpose and intended nature of the business relationship.

**Application of customer due diligence measures**

6 (1) Subject to regulations 7, 10, 11, 13(4) and 14, a relevant person must apply customer due diligence measures when he —

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- (a) establishes a business relationship;
  - (b) carries out an occasional transaction;
  - (c) suspects money laundering or terrorist financing; or
  - (d) doubts the veracity or adequacy of documents, data or information previously obtained for the purpose of identification or verification.
- (2) A relevant person must apply customer due diligence measures at appropriate times to existing customers on a risk-sensitive basis.
- (3) A relevant person must—
- (a) determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction; and
  - (b) be able to demonstrate to its supervisory authority that the extent of customer due diligence measures is appropriate in view of the risks of money laundering and terrorist financing.
- (4) Where—
- (a) a relevant person is required to apply customer due diligence measures in the case of a trust, legal entity (other than a body corporate) or a legal arrangement (other than a trust); and
  - (b) the class of persons in whose main interest the trust, entity or arrangement is set up or operates is identified as a beneficial owner,
- the relevant person is not required to identify all the members of the class.

**Ongoing monitoring**

- 7 (1) A relevant person must conduct ongoing monitoring of a business relationship.
- (2) “Ongoing monitoring” of a business relationship means—
- (a) scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person’s knowledge of the customer, his business and risk profile; and

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(b) so far as practicable keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

(3) Regulation 6(3) applies to the duty to conduct ongoing monitoring under paragraph (1) as it applies to customer due diligence measures.

**Timing of verification**

8 (1) This regulation applies in respect of the duty under regulations 6(1)(a) and (b) to apply the customer due diligence measures referred to in regulations 5(a) and (b).

(2) Subject to paragraphs (3) to (5), a relevant person must verify the identity of the customer (and any beneficial owner) before the establishment of a business relationship or the carrying out of an occasional transaction.

(3) Such verification may be completed during the establishment of a business relationship if—

- (a) this is necessary not to interrupt the normal conduct of business; and
- (b) there is little risk of money laundering or terrorist financing occurring, provided that the verification is completed as soon as practicable after contact is first established.

(4) The verification of the identity of the beneficiary under a life insurance policy may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy.

(5) 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 —

- (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), before verification has been completed.

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**Requirement to cease transactions, etc.**

9 (1) Where in relation to any customer, a relevant person is unable to apply customer due diligence measures in accordance with the provisions of these Regulations he —

- (a) shall not carry out a transaction with or for the customer through a bank account;
- (b) shall not establish a business relationship or carry out an occasional transaction with the customer;
- (c) shall terminate any existing business relationship with the customer; and
- (d) shall consider whether he is required to make a disclosure by section 46(2) of the Proceeds of Crime Act 1997 or paragraph 1 of Part I of Schedule I of the Anti-Terrorism (Financial and Other Measures) Act 2004.

(2) Paragraph (1) does not apply where a professional legal adviser is in the course of ascertaining the legal position for his client or performing his task of defending or representing that client in, or concerning, legal proceedings, including advice on instituting or avoiding proceedings.

**Simplified due diligence**

10 (1) A relevant person is not required to apply the customer due diligence measures referred to in regulation 5(a), (b) or (c) in the circumstances mentioned in regulation 6(1)(a), (b) or (d) where he has reasonable grounds for believing that the customer, product or transaction related to such product, falls within any of the following paragraphs.

- (2) The customer is—
  - (a) an AML/ATF regulated financial institution which is subject to the requirements of these Regulations; or
  - (b) an AML/ATF regulated financial institution (or equivalent institution) which—
    - (i) is situated in a country or territory other than Bermuda which imposes requirements equivalent to those laid down in these Regulations; and
    - (ii) is supervised for compliance with those requirements.

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(3) The customer is a company whose securities are listed on an appointed stock exchange.

(4) The customer is an independent professional (or similar professional) and the product is an account into which monies are pooled, provided that —

(a) where the pooled account is held in a country or territory other than Bermuda —

(i) that country or territory imposes requirements to combat money laundering and terrorist financing which are equivalent to those laid down in these Regulations; and

(ii) the independent professional is supervised in that country or territory for compliance with those requirements; and

(b) information on the identity of the persons on whose behalf monies are held in the pooled account is available, on request, to the institution which acts as a custodian for the account.

(5) The customer is a public authority in Bermuda.

(6) The product is —

(a) a life insurance contract where the annual premium is no more than \$1,000 or where a single premium of no more than \$2,500 is paid for a single policy;

(b) an insurance contract for the purpose of a pension scheme where the contract contains no surrender clause and cannot be used as collateral; or

(c) a pension, superannuation or similar scheme which provides retirement benefits to employees, where contributions are made by an employer or by way of deduction from an employee's wages and the scheme rules do not permit the assignment of a member's interest under the scheme.

(7) The product and any transaction related to such product fulfils all the conditions set out in paragraph 1 of the Schedule.

*[Regulation 10 amended by 2008:49 s.39(6) effective 1 January 2009]*

**Enhanced customer due diligence**

11 (1) A relevant person must apply on a risk-sensitive basis enhanced customer due diligence measures—

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- (a) in accordance with paragraphs (2) to (4);
- (b) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

(2) Where the customer has not been physically present for identification purposes, a relevant person must take specific and adequate measures to compensate for the higher risk, for example by applying one or more of the following measures—

- (a) ensuring that the customer's identity is established by additional documents, data or information;
- (b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by an AML/ATF regulated financial institution (or equivalent institution) which is subject to equivalent Regulations;
- (c) ensuring that the first payment is carried out through an account opened in the customer's name with a banking institution.

(3) A banking institution (the “correspondent”) which has or proposes to have a correspondent banking relationship with a respondent institution (the “respondent”) from a country or territory other than Bermuda must —

- (a) gather sufficient information about the respondent to understand fully the nature of its business;
- (b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;
- (c) assess the respondent's controls relating to anti-money laundering control and anti-terrorism financing controls;
- (d) obtain approval from senior management before establishing a new correspondent banking relationship;
- (e) document the respective responsibilities of the respondent and correspondent;
- (f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent —
  - (i) has verified the identity of, and performs ongoing due diligence on, such customers; and

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(ii) is able upon request to provide relevant customer due diligence data to the correspondent.

(4) A relevant person who proposes to have a business relationship or carry out an occasional transaction with a politically exposed person must —

- (a) have approval from senior management for establishing a business relationship with that person;
- (b) take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction; and
- (c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the business relationship.

(5) In paragraph (4), “a politically exposed person” means a person to whom paragraph (6) applies.

(6) This paragraph applies to a person who is in any country or territory outside Bermuda—

- (a) an individual who is or has, at any time in the preceding year, been entrusted with prominent public functions;
- (b) a person who falls in any of the categories listed in paragraph 2(1)(a) of the Schedule;
- (c) an immediate family member of a person referred to in sub-paragraph (a) including a person who falls in any of the categories listed in paragraph 2(1)(d) of the Schedule; or
- (d) a known close associate of a person referred to in sub-paragraph (a) including a person who falls in either of the categories listed in paragraph 2(1)(e) of the Schedule.

(7) For the purpose of deciding whether a person is a known close associate of a person referred to in paragraph (6) (a), a relevant person need only have regard to information which is in his possession or is publicly known.

*[Regulation 11 amended by 2008:49 s.39(6) effective 1 January 2009]*

**Branches and subsidiaries**

12 (1) An AML/ATF regulated financial institution must require its branches and subsidiary undertakings which are located in a country or territory other than Bermuda to apply, to the extent permitted by the law

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of that country or territory, measures at least equivalent to those set out in these Regulations with regard to customer due diligence measures, ongoing monitoring and record-keeping.

(2) Where the law of such a country or territory does not permit the application of such equivalent measures by the branch or subsidiary undertaking located in that country or territory, the AML/ATF regulated financial institution shall—

- (a) inform the Bermuda Monetary Authority accordingly; and
- (b) take additional measures to handle effectively the risk of money laundering and terrorist financing.

(3) In this regulation “subsidiary undertaking” except in relation to an incorporated friendly society, has the meaning given by section 86 of the Companies Act (“parent and subsidiary undertakings”) and, in relation to a body corporate in or formed under the law of a country or territory other than Bermuda, includes an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that country or territory.

*[Regulation 12 amended by 2008:49 s.39(6) effective 1 January 2009]*

### **Shell banks, anonymous accounts etc.**

13 (1) A banking institution shall not enter into, or continue, a correspondent banking relationship with a shell bank.

(2) A banking institution must take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

(3) An AML/ATF regulated financial institution must not set up an anonymous account or an anonymous pass book for any new or existing customer.

(4) As soon as possible after the commencement of these Regulations all AML/ATF regulated financial institutions must apply customer due diligence measures to, and conduct ongoing monitoring of, all anonymous accounts and passbooks in existence on that date and in any event before such accounts or passbooks are used in any way.

(5) A “shell bank” means a banking institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision making and management, and which is unaffiliated with a regulated financial group.

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*[Regulation 13 amended by 2008:49 s.39(6) effective 1 January 2009]*

**Reliance on third parties**

14 (1) A relevant person may rely on a person who falls within paragraph (2) [or who the relevant person has reasonable grounds to believe falls within paragraph (2)] to apply any customer due diligence measures provided that —

- (a) the other person consents to being relied on; and
- (b) notwithstanding the relevant person's reliance on the other person,

the relevant person remains liable for any failure to apply such measures.

(2) The persons are —

- (a) an AML/ATF regulated financial institution;
- (b) a relevant person who is—
  - (i) an independent professional; and
  - (ii) is supervised for the purposes of these Regulations by the Bermuda Bar Association or, as the case may be, the Institute of Chartered Accountants of Bermuda.
- (c) a person who carries on business in a country or territory other than Bermuda who is —
  - (i) an institution that carries on business corresponding to the business of AML/ATF regulated financial institution or independent professional;
  - (ii) in the case of an independent professional, subject to mandatory professional registration recognised by law;
  - (iii) subject to requirements equivalent to those laid down in these Regulations; and
  - (iv) supervised for compliance with requirements equivalent to supervision by his supervisory authority.

(3) Nothing in this regulation prevents a relevant person applying customer due diligence measures by means of an outsourcing service provider or agent provided that the relevant person remains liable for any failure to apply such measures.

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*[Regulation 14 amended by 2008:49 s.39(6) effective 1 January 2009]*

**PART 3  
RECORD-KEEPING, SYSTEMS, TRAINING ETC.**

**Record-keeping**

15 (1) A relevant person must keep the records specified in paragraph (2) for at least the period specified in paragraph (3).

(2) The records are—

(a) a copy of, or the references to, the evidence of the customer's identity obtained pursuant to regulation 6, 11, 13(4) or 14;

(b) the supporting evidence and records (consisting of the original documents or copies admissible in court proceedings) in respect of the business relationships and occasional transactions which are the subject of customer due diligence.

(3) The period is five years beginning on the date on which the business relationship ends, or, in the case of an occasional transaction, five years beginning on the date on which the transaction is completed.

(4) A relevant person who is relied on by another person must keep the records specified in paragraph (2)(a) for five years beginning on the date on which he is relied on for the purposes of regulation 6, 11 or 13(4) in relation to any business relationship or occasional transaction.

(5) But in any case where a police officer has notified a relevant person in writing that particular records are or may be relevant to an investigation which is being carried out, the relevant person must keep the records pending the outcome of the investigation.

(6) A person referred to in regulation 14(2) (a) or (b) who is relied on by a relevant person must, if requested by the person relying on him within the period referred to in paragraph (4)—

(a) as soon as reasonably practicable make available to the person who is relying on him any information about the customer (and any beneficial owner) which he obtained when applying customer due diligence measures; and

(b) as soon as reasonably practicable forward to the person who is relying on him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which he obtained when applying those measures.

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(7) A relevant person who relies on a person referred to in regulation 14(2)(c) (a “third party”) to apply customer due diligence measures must take steps to ensure that the third party will, if requested by the relevant person within the period referred to in paragraph (4)—

- (a) as soon as reasonably practicable make available to him any information about the customer (and any beneficial owner) which the third party obtained when applying customer due diligence measures; and
- (b) as soon as reasonably practicable forward to him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which the third party obtained when applying those measures.

(8) Subparagraphs (6) and (7) do not apply where a relevant person applies customer due diligence measures by means of an outsourcing service provider or agent.

(9) For the purposes of this regulation, a person relies on another person where he does so in accordance with regulation 14(1).

**Systems**

16 (1) A relevant person must establish and maintain appropriate and risk-sensitive policies and procedures relating to —

- (a) customer due diligence measures and ongoing monitoring;
- (b) reporting;
- (c) record-keeping;
- (d) internal control;
- (e) risk assessment and management;
- (f) the monitoring and management of compliance with and the internal communication of such policies and procedures in order to prevent activities related to money laundering and terrorist financing.

(2) The policies and procedures referred to in paragraph (1) include policies and procedures—

- (a) which provide for the identification and scrutiny of—
  - (i) complex or unusually large transactions;

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- (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
  - (iii) any other activity which the relevant person regards as particularly likely by its nature to be related to money laundering or terrorist financing;
- (b) which specify the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which might favour anonymity;
- (c) to determine whether a customer is a politically exposed person;
- (d) under which —
- (i) anyone in the organisation to whom information or other matter comes in the course of the business as a result of which he knows or suspects that a person is engaged in money laundering or terrorist financing is required to comply with sections 46(5) of the Proceeds of Crime Act 1997 or, as the case may be, section 9 or paragraph 1 of Part 1 of Schedule 1 to the Anti-Terrorism (Financial and Other Measures) Act 2004; and
  - (ii) where a disclosure is made to the nominated officer, he must consider it in the light of any relevant information which is available to the relevant person and determine whether it gives rise to knowledge or suspicion that a person is engaged in money laundering or terrorist financing.

(3) An AML/ATF regulated financial institution must communicate where relevant the policies and procedures which it establishes and maintains in accordance with this regulation to its branches and subsidiaries which are located outside Bermuda.

(4) An AML/ATF regulated financial institution must have systems in place enabling it to respond as soon as reasonably practicable to enquiries from the Financial Intelligence Agency or a police officer —

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- (a) whether it maintains, or has maintained during the previous five years, a business relationship with any person; and
- (b) the nature of that relationship.

*[Regulation 16 amended by 2008:49 s.39(6) effective 1 January 2009]*

### **Internal reporting procedures**

17 (1) A relevant person must maintain internal reporting procedures which require that —

- (a) the reporting officer to whom a report is to be made of any information or other matter which comes to the attention of an employee and which in the opinion of that employee gives rise to a knowledge or suspicion that another person is engaged in money laundering or terrorist financing;
- (b) any such report be considered by the reporting officer in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
- (c) the reporting officer be given access to any other information which may be of assistance to him in considering the report; and
- (d) the reporting officer disclose to the Financial Intelligence Agency the information or other matter contained in a report, where the reporting officer knows or suspects that a person is engaged in money laundering or terrorist financing.

(2) Paragraph (1) does not apply where the relevant person is an individual who neither employs nor acts in association with any other person.

### **Training etc.**

18 (1) A relevant person must take appropriate measures so that all relevant employees of his are —

- (a) made aware of the law relating to money laundering and terrorist financing; and
- (b) regularly given training in how to recognise and deal with transactions which may be related to money laundering or terrorist financing.

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(2) For the purposes of this paragraph, an employee is a relevant employee if, at any time in the course of his duties, he has, or may have access to any information which may be relevant in determining whether any person is engaged in money laundering or terrorist financing.

**Offences**

19 (1) A person who fails to comply with any requirement in regulations 6(1), (2) and (3), 7(1) and (3), 8(2), 9(1)(a), (b) and (c), 11(1), 12(1) and (2), 13(1), (2), (3) and (4), 15(1), (4), (5), (6) and (7), 16(1), (3) and (4), 17(1) and 18(1) is guilty of an offence and liable —

(a) on summary conviction, to a fine of \$50,000;

(b) on conviction on indictment to a fine of \$750, 000 or to imprisonment for a term of two years or to both.

(2) In deciding whether a person has committed an offence under paragraph (1), the court must consider whether he followed any relevant guidance which was at the time—

(a) issued by a supervisory authority;

(b) approved by the Minister; and

(c) published in a manner approved by the Minister as appropriate in his opinion to bring the guidance to the attention of persons likely to be affected by it.

(3) A person is not guilty of an offence under this regulation if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where a person is convicted of an offence under this regulation, he shall not also be liable to a civil fine imposed by or under any statutory provision in relation to the same matter.

*[Regulation 19 amended by 2008:49 s.40(2) effective 1 January 2009]*

**BR 9/1998 revoked**

20 The Proceeds of Crime (Money Laundering) Regulations 1998 are revoked.

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**PART 4  
WIRE TRANSFERS**

*Introduction and application*

**Interpretation of Part 4**

21 In this Part —

“batch file transfer” means several individual transfers of funds that are bundled together for transmission;

“complete information on the payer” means information consisting of the payer’s name, address and account number, but—

- (a) in the case of a natural person, the address may be substituted with the date and place of birth of the payer, his customer identification number or national identity number; and
- (b) where the payer does not have an account number, the payer’s PSP shall substitute it with a unique identifier that allows the transaction to be traced back to the payer;

“intermediary PSP” means a PSP, neither of the payer nor of the payee, who participates in the execution of transfers of funds;

“money laundering” has the meaning given in section 7(1) of the Proceeds of Crime Act 1997;

“payee” means a person who is the intended final recipient of transferred funds;

“payer” means either—

- (a) a person who holds an account and allows a transfer of funds from that account, or
- (b) where there is no account, a person who places an order for a transfer of funds;

“payee’s PSP” means the PSP of the payee;

“payer’s PSP” means the PSP of the payer;

“PSP” (payment service provider) means a person whose business includes the provision of services for the transfer of funds;

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“transfer of funds” means any transaction carried out on behalf of a payer through a PSP by electronic means, with a view to making funds available to a payee through a PSP, irrespective of whether the payer and the payee are the same person;

“unique identifier” means a combination of letters, numbers or symbols, determined by the PSP, in accordance with the protocols of the payment and settlement system or messaging system used to effect the transfer of funds.

*[Regulation 21 inserted by BR 2/2010 s.2 effective 13 January 2010 ]*

**Application of Part 4**

- 22 (1) This Part applies to transfers of funds, in any currency, that are sent or received by a PSP in Bermuda.
- (2) This Part does not apply to transfers of funds carried out using a credit or debit card, if –
- (a) the payee has an agreement with the PSP permitting payment for the provision of goods and services; and
  - (b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies such transfer of funds.
- (3) This Part does not apply to transfers of funds carried out by means of a mobile telephone or any other digital or information technology (“IT”) device, when such transfers are pre-paid and do not exceed \$150.
- (4) This Part does not apply to transfers of funds carried out by means of a mobile telephone or any other digital or IT device, when such transfers are post-paid and meet all of the following conditions–
- (a) the payee has an agreement with the PSP permitting payment for the provision of goods and services;
  - (b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds; and
  - (c) the payee’s PSP is an AML/ATF regulated financial institution.
- (5) This Part does not apply to transfers of funds–
- (a) where the payer withdraws cash from his own account;
  - (b) where there is a debit transfer authorisation between the payer and the payee permitting payments between them

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through accounts, provided that a unique identifier accompanies the transfer of funds, enabling the payer to be traced back;

- (c) where truncated cheques are used;
- (d) to public authorities for taxes, fines or other levies within Bermuda; or
- (e) where both the payer and the payee are PSPs acting on their own behalf.

*[Regulation 22 inserted by BR 2/2010 s.2 effective 13 January 2010]*

*Obligations on the Payment Service Provider of the Payer*

**Information accompanying transfers of funds and record keeping**

23 (1) The payer's PSP shall ensure that transfers of funds are accompanied by complete information on the payer.

(2) The payer's PSP shall, before transferring the funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source.

(3) In the case of transfers of funds from an account, the complete information on a payer shall be deemed to have been verified if the payer's PSP has complied with the requirements of customer due diligence under Part 2.

(4) In the case of transfers of funds not made from an account, the payer's PSP shall verify the information on the payer only where the amount exceeds \$1000, unless the transaction is carried out in several operations that appear to be linked and together exceed \$1000.

(5) The payer's PSP shall for five years keep records of complete information on the payer that accompanies transfers of funds.

*[Section 23 inserted by BR 2/2010 s.2 effective 13 January 2010]*

**Transfers of funds within Bermuda**

24 (1) Notwithstanding regulation 23(1), where both the payer's PSP and the payee's PSP are situated in Bermuda, it shall suffice if transfers of funds are accompanied by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer.

(2) But if the payee's PSP so requests, the payer's PSP shall make available to the payee's PSP complete information on the payer, within three working days of receiving that request.

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*[Regulation 24 inserted by BR 2/2010 s.2 effective 13 January 2010]*

### **Batch file transfers**

25 Regulation 23(1) does not apply, in the case of a batch file transfer from a single payer where any payee's PSP is situated outside Bermuda, to the individual transfers bundled together in the batch transfer, if—

- (a) the batch transfer file contains complete information on the payer; and
- (b) the individual transfers of funds carry the account number of the payer or a unique identifier.

*[Regulation 25 inserted by BR 2/2010 s.2 effective 13 January 2010]*

### *Obligations on the Payment Service Provider of the Payee*

### **Detection of missing or incomplete information on the payer**

26 (1) The payee's PSP shall detect whether, in the messaging or payment and settlement system used to effect a transfer of funds, the fields relating to the information on the payer have been completed using the characters or inputs admissible within the conventions of that messaging or payment and settlement system.

(2) The payee's PSP shall have effective procedures in place in order to detect whether the following information on the payer is missing—

- (a) for transfers of funds where the payer's PSP is situated in Bermuda, the information required under regulation 24;
- (b) for transfers of funds where the payer's PSP is situated outside Bermuda, complete information on the payer or, where applicable, the information required under regulation 31; and
- (c) for batch file transfers where the payer's PSP is situated outside Bermuda, complete information on the payer in the batch file transfer only, but not in the individual transfers bundled together in the batch transfer.

*[Regulation 26 inserted by BR 2/2010 s.2 effective 13 January 2010]*

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**Transfers with missing or incomplete information on the payer**

27 (1) If the payee's PSP becomes aware, when receiving transfers of funds, that information on the payer required under this Part is missing or incomplete, the payee's PSP shall—

- (a) reject the transfer; or
- (b) ask for complete information on the payer.

(2) But a person is not required to comply with paragraph (1) if to do so would contravene any other provision of an enactment.

(3) If the payer's PSP regularly fails to supply the information on the payer required by this Part, the payee's PSP shall report that fact to the Bermuda Monetary Authority.

(4) If the payer's PSP regularly fails to supply the information on the payer required by this Part, the payee's PSP shall take steps to attempt to ensure that the payer's PSP complies with the requirements as to the supply of information set out in this Part, which steps may include—

- (a) issuing warnings to the payer's PSP; and
- (b) setting deadlines for the payer's PSP to comply with the requirements as to the supply of information set out in this Part.

(5) If after the payee's PSP has taken steps under paragraph (4) in relation to a payer's PSP and the requirements as to the supply of information set out in this Part are still not regularly complied with by the payer's PSP, the payee's PSP shall either—

- (a) reject any future transfers of funds from that PSP; or
- (b) decide whether or not to restrict or terminate its business relationship with that provider, either with respect to services for the transfer of funds or with respect to any mutual supply of other services.

*[Regulation 27 inserted by BR 2/2010 s.2 effective 13 January 2010]*

**Requirement to report where missing or incomplete information makes transaction suspicious**

28 The payee's PSP shall consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported, in accordance with the requirements of section 46 of the Proceeds of Crime Act 1997 or paragraph 1 of Part 1 of Schedule 1 of the Anti-Terrorism (Financial and Other Measures) Act 2004.

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*[Regulation 28 inserted by BR 2/2010 s.2 effective 13 January 2010]*

### **Record keeping**

29 The payee's PSP shall keep for five years records of any information received on the payer.

*[Regulation 29 inserted by BR 2/2010 s.2 effective 13 January 2010]*

### *Obligations on intermediary payment service providers*

### **Keeping information on the payer with the transfer**

30 Intermediary PSPs shall ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer.

*[Regulation 30 inserted by BR 2/2010 s.2 effective 13 January 2010]*

### **Duties of intermediary PSP in case of technical limitations**

31 (1) This regulation applies where the payer's PSP is situated outside Bermuda and the intermediary PSP is situated within Bermuda.

(2) Unless an intermediary PSP becomes aware, when receiving a transfer of funds, that information on the payer required under this Part is missing or incomplete, the intermediary may, for the purposes of sending transfers of funds to the payer's PSP, use a payment system with technical limitations that prevents information on the payer from accompanying the transfer of funds.

(3) Where an intermediary PSP becomes aware, when receiving a transfer of funds, that information on the payer required under this Part is missing or incomplete, the intermediary PSP shall only use a payment system with technical limitations if the intermediary PSP is able to inform the payee's PSP of this fact, either within a messaging or payment system that provides for communication of this fact or through another procedure, provided that the manner of communication is accepted by, or agreed between, both PSPs.

(4) Where an intermediary PSP uses a payment system with technical limitations, the intermediary PSP shall, upon request from the payee's PSP, make available to the payee's PSP all the information on the payer that it has received, irrespective of whether it is complete or not, within three working days of receiving that request.

(5) In the cases referred to in paragraphs (2), (3) and (4), the intermediary PSP shall keep for five years records of all information received.

*[Regulation 31 inserted by BR 2/2010 s.2 effective 13 January 2010]*

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*Offences and Penalties*

**Offences**

32 (1) A payer's PSP is guilty of an offence if he fails to comply with any requirements of—

- (a) regulation 23(1) (read with regulations 24(1), 24(2) and 25 as the case requires);
- (b) regulation 23(2) (read with regulations 23(3) or 23(4), as the case requires);
- (c) regulation 23(5); or
- (d) regulation 24(2).

(2) A payee's PSP is guilty of an offence if he fails to comply with any requirements of—

- (a) regulation 26(1) (read with regulation 26(2));
- (b) regulation 27(1) (read with regulation 27(2));
- (c) regulation 27(3); or
- (d) regulation 29.

(3) An intermediary PSP is guilty of an offence if he fails to comply with any requirements of—

- (a) regulation 30;
- (b) regulation 31(3);
- (c) regulation 31(4); or
- (d) regulation 31(5).

(4) A person guilty of an offence under paragraph (1), (2), or (3) is liable—

- (a) on summary conviction, to a fine of \$50,000;
- (b) on conviction on indictment to a fine of \$750,000 or to imprisonment for a term of two years or to both.

(5) In deciding whether a person has committed an offence under paragraph (1), (2) or (3), the court must consider whether he followed any relevant guidance that was at the time—

- (a) issued by the Bermuda Monetary Authority;
- (b) approved by the Minister; and

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(c) published in a manner approved by the Minister as appropriate in his opinion to bring the guidance to the attention of persons likely to be affected by it.

(6) A person is not guilty of an offence under this regulation if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(7) Where a person is convicted of an offence under this regulation, he shall not also be liable to a civil fine imposed by or under any statutory provision in relation to the same matter.

*[Regulation 32 inserted by BR 2/2010 s.2 effective 13 January 2010]*

**SCHEDULE (Regulation 10(7))  
SIMPLIFIED DUE DILIGENCE AND POLITICALLY  
EXPOSED PERSONS**

**Simplified due diligence**

1 For the purposes of regulation 10(7), the conditions are—

- (a) the product has a written contractual base;
- (b) any related transaction is carried out through an account of the customer with a banking institution which is subject to these Regulations or a banking institution situated in a country or territory other than Bermuda which imposes requirements equivalent to those laid down in these Regulations;
- (c) the product or related transaction is not anonymous and its nature is such that it allows for the timely application of customer due diligence measures where there is a suspicion of money laundering or terrorist financing;
- (d) the product is within the following maximum threshold—
  - (i) in the case of insurance policies or savings products of a similar nature, the annual premium is no more than \$1,000 or there is a single premium of no more than \$ 2,500;
  - (ii) in the case of products which are related to the financing of physical assets where the legal and beneficial title of the assets is not transferred to the customer until the termination of the contractual relationship (whether the transaction is carried out in a single operation or in several operations which appear to be

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- linked), the annual payments do not exceed \$15,000;
- (iii) in all other cases, the maximum threshold is \$15,000.
- (e) the benefits of the product or related transaction cannot be realised for the benefit of third parties, except in the case of death, disablement, survival to a predetermined advanced age, or similar events;
- (f) in the case of products or related transactions allowing for the investment of funds in financial assets or claims, including insurance or other kinds of contingent claims—
  - (i) the benefits of the product or related transaction are only realisable in the long term;
  - (ii) the product or related transaction cannot be used as collateral; and
  - (iii) during the contractual relationship, no accelerated payments are made, surrender clauses used or early termination takes place.

**Politically exposed persons**

- 2 (1) For the purposes of regulation 11(6)—
  - (a) individuals who are or have been entrusted with prominent public functions include the following—
    - (i) heads of state, heads of government, ministers and deputy or assistant ministers;
    - (ii) members of parliaments;
    - (iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not generally subject to further appeal, except in exceptional circumstances;
    - (iv) members of courts of auditors or of the boards of central banks;
    - (v) ambassadors, chargés d'affaires and high-ranking officers in the armed forces; and
    - (vi) members of the administrative, management or supervisory bodies of State-owned enterprises;

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- (b) the categories set out in sub-paragraphs (i) to (vi) of paragraph (a) do not include middle-ranking or more junior officials;
- (c) the categories set out in sub-paragraphs (i) to (v) of paragraph (a) include, where applicable, positions at domestic and international level;
- (d) immediate family members include the following—
  - (i) a spouse;
  - (ii) a partner;
  - (iii) children and their spouses or partners; and
  - (iv) parents;
- (e) persons known to be close associates include the following—
  - (i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with a person referred to in regulation 11(6)(a); and
  - (ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of a person referred to in regulation 11(6)(a).

(2) In paragraph (1) (d), “partner” means a person who is considered by his national law as equivalent.

Made this 24<sup>th</sup> day of November, 2008

Minister of Justice

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*[Amended by:*

*2008 : 49*

*BR 2/2010]*