



THE
JAMAICA GAZETTE
SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

102R¹

Vol. CXXX

THURSDAY, MARCH 29, 2007

No. 30E

No. 44E

THE PROCEEDS OF CRIME ACT

THE PROCEEDS OF CRIME (MONEY LAUNDERING PREVENTION) REGULATIONS, 2007

In exercise of the powers conferred upon the Minister by sections 102 and 138 of the Proceeds of Crime Act, 2007, the following Regulations are hereby made:—

Citation. 1. These Regulations may be cited as the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007.

Interpre-
tation. 2.—(1) In these Regulations—

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

“business relationship” means any arrangement between two or more persons where the purpose of the arrangement is to facilitate the carrying out of—

- (a) two or more transactions between the persons concerned;
or

(b) transactions between the persons concerned on a frequent, habitual or regular basis;

"competent authority" has the meaning specified in Part V of the Act;

"designated authority" has the meaning specified in Part V of the Act;

"employee" means a person (including a person in a senior management position) who has entered into or works under a contract of services, or a contract for services, with a regulated business, whether such contract is express or implied, oral or in writing;

"money transfer and remittance agent or agency" means an approved money transfer and remittance agent or agency as defined by section 2 of the Bank of Jamaica Act;

"one-off transaction" means any transaction other than a transaction carried out in the course of a business relationship formed with a regulated business;

"regulated business" means a business falling within the regulated sector as defined in the Fourth Schedule to the Act;

"relevant financial business" means any financial business carried on by a regulated business.

(2) Any reference in paragraph (1) to an arrangement between two or more persons is a reference to an arrangement in which at least one person is acting in the course of a regulated business.

(3) In determining whether a person has complied with any of the requirements of these regulations, a court shall take account of any relevant guidance that was at the time concerned—

(a) issued by the designated authority or a body that regulates, or is representative of, any trade profession, business or employment concerned;

(b) approved by the Minister; and

(c) published in the Gazette.

(4) In proceedings against any person for an offence under this regulation, it shall be a defence for that person to show that he took all reasonable steps and exercised due diligence to avoid committing the offence.

(5) In this regulation, "supervisory or regulatory guidance" means guidance issued, adopted or approved by the relevant competent authority.

Duty of
financial
institution to
report certain
transactions:

3.—(1) Subject to the provisions of these Regulations, it shall be the duty of a financial institution to make a report to the designated authority, either on its own initiative or in response to a request made to it by the designated authority, in relation to any cash transaction involving the prescribed amount being carried out by any person with that institution.

(2) Subject to paragraph (3), paragraph (1) shall not apply to transactions carried out by—

- (a) a ministry, department or agency of government;
- (b) a statutory body or authority;
- (c) a company registered under the Companies Act, in which the Government or an agency of the Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company;
- (d) any Embassy, High Commission, consular office or organization to which the Diplomatic Immunities and Privileges Act applies; or
- (e) any organization in relation to which an order is made under section 3 (2) of the Technical Assistance (Immunities and Privileges) Act.

(3) An authorized officer of the designated authority may, without prejudice to its rights to utilize disclosure orders or other remedies against any public body, request in writing information from a body specified in paragraph (2) (a), (b) or (c).

(4) A financial institution that makes a report under paragraph (1) to the designated authority shall not disclose the existence of that report to any other person except the competent authority.

(5) Where a financial institution makes a report in accordance with paragraph (1), that institution, its directors and employees shall, regardless of the outcome of the report, be exempt from—

- (a) any liability to prosecution for an offence under section 92 or 93 of the Act (money laundering), in relation to any conduct disclosed in the report; and
- (b) any criminal, civil or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

(6) In making a report under paragraph (1) or a suspicious transactions report under section 94 or 95 of the Act, a regulated business shall comply with such directions as may be given by the designated authority in relation to—

- (a) previous or current reports;

- (b) the provision of information required in such reports; and
- (c) the provision of additional information in relation to queries concerning specific matters arising from the reports, including—
 - (i) due diligence procedures followed in relation to a specific transaction;
 - (ii) persons authorized to sign on the account in question;
 - (iii) errors identified in the reports; and
 - (iv) such other matters as may be specified in the directions.

(7) A financial institution that fails to comply with paragraph (1) or (4), or a regulated business that fails to comply with paragraph (6), commits an offence and is liable upon conviction before a Resident Magistrate's Court to a fine not exceeding four hundred thousand dollars.

(8) In paragraph (1)—

“cash transaction” means a transaction involving the physical transfer of currency from one person to another;

“prescribed amount” means in relation to—

- (a) a money transfer and remittance agent or agency, five thousand dollars or more;
- (b) *cambios* and *bureaux de change*, eight thousand dollars or more;
- (c) any other financial institution, fifteen thousand dollars or more,

in the currency of the United States of America or an equivalent amount in Jamaican currency or any other currency.

(9) For the purposes of the definition of “cash transaction” and “prescribed amount” in paragraph (8), “currency” refers to the coin and paper money designated as the legal tender of any country and which circulates and is customarily used and accepted as a medium of exchange in the country of issue.

Exemption
from duty to
report under
regulation 3.

4.—(1) A financial institution may apply in writing to the Minister responsible for finance or a person designated in writing by that Minister for exemption from the requirements of regulation 3 in relation to a transaction or series of transactions carried out or to be carried out by a person who is an established customer of that institution.

(2) The Minister responsible for finance may grant an exemption in relation to a transaction or series of transactions specified in an application under paragraph (1) if the Minister is satisfied that the

exemption should be granted, having regard to the matters specified in paragraph (3).

(3) The matters referred to in paragraph (2) are as follows—

- (a) the transaction or series of transactions consists of a deposit into or a withdrawal from an account maintained by that customer with the financial institution;
- (b) the customer carries on—
 - (i) a retail business (other than a business that includes the selling of vehicles, vessels, farm machinery or aircraft);
 - (ii) a business declared by the Minister by order to be an entertainment business or a hospitality business for the purposes of these Regulations;
- (c) the account through which the transaction or series of transactions is conducted is maintained for the purposes of any such business; and
- (d) the amount of cash involved in the transaction or series of transactions does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.

(4) In paragraph (1) “established customer”, in relation to an application for exemption, means a person who has been a customer of the financial institution for not less than a period of twelve months immediately preceding the date of the application,

Regulatory
controls by
regulated
businesses.

5.—(1) A regulated business shall establish and implement such programmes, policies, procedures, and controls as may be necessary for the purpose of preventing or detecting money laundering.

(2) Without prejudice to the generality of paragraph (1), the programmes referred to in that paragraph shall include—

- (a) the establishment of procedures to ensure high standards of integrity of employees;
- (b) the development of a system to evaluate the personal employment and financial history of those employees;
- (c) the establishment of programmes for training of employees on a continuing basis and for instructing employees as to their responsibilities in respect of the provisions of the Act and these Regulations;
- (d) arrangements for an independent audit in order to ensure that the programmes as aforesaid are being implemented.

(3) For the purposes of this regulation, a regulated business shall nominate an officer of the business who performs management functions to be responsible for ensuring the implementation of the programmes, policies, procedures and controls referred to in paragraph (1), including the reporting of transactions referred to in regulation 3 or section 94 or 95 of the Act.

(4) A regulated business shall consult with the competent authority for the purpose of carrying out its obligations under this registration.

(5) A regulated business that fails to comply with paragraph (1) or (3) commits an offence and is liable upon conviction, before a Resident Magistrate's Court to a fine not exceeding four hundred thousand dollars.

Systems and
training to
prevent
money
laundering.

6.— (1) No regulated business shall form a business relationship, or carry out a one-off transaction, with or for another person unless the regulated business—

(a) maintains the following procedures in relation to that business relationship or one-off transaction—

(i) identification procedures and transaction verification procedures in accordance with regulations 7 and 11;

(ii) record-keeping procedures in accordance with regulation 14;

(iii) procedures of internal control and communication in accordance with regulation 15;

(b) takes appropriate measures from time to time for the purpose of making employees whose duties include the handling of relevant financial business aware of—

(i) the procedures under sub-paragraph (a) which relate to the relevant financial business in question; and

(ii) the provisions of the Act and any regulations made thereunder; and

(c) provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering.

(2) A person who fails to comply with paragraph (1) commits an offence and is liable upon conviction—

(a) before a Resident Magistrate—

(i) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term

not exceeding twelve months, or to both such fine and imprisonment,

(ii) in the case of a body corporate, to a fine not exceeding three million dollars;

(b) in a Circuit Court—

(i) in the case of an individual, to a fine or to imprisonment for a term not exceeding twenty years, or to both such fine and imprisonment;

(ii) in the case of a body corporate, to a fine.

Identification
procedures
business
relationships
and
transactions.

7.—(1) Subject to regulation 8, identification procedures maintained by a regulated business are in accordance with this regulation if such procedures require that—

(a) as soon as is practicable after contact is first made between the regulated business and an applicant for business concerning any particular business relationship or one-off transaction—

(i) the applicant for business produces satisfactory evidence of his identity to the regulated business; and

(ii) the regulated business takes such measures as are specified in its identification procedures as will verify the applicant's identity; and

(b) where the regulated business is unable to verify the applicant's identity, the business relationship or one-off transaction in question shall not proceed any further;

(c) as concerns any business relationship, customer information is updated—

(i) at least once in every five years during the course of the business relationship; and

(ii) whenever there is any doubt about the veracity or adequacy of previously obtained customer information; and

(d) where customer information is not updated as required under sub-paragraph (c), the business relationship in question shall not proceed any further.

(2) Transaction verification procedures maintained by a regulated business are in accordance with the regulation if such procedures require that—

(a) as concerns any business relationship or one-off transaction, the regulated business takes such measures as are specified in its transaction verification procedures as will produce

satisfactory evidence as to the purpose and intended nature of the business relationship or one-off transaction in any of the circumstances specified in paragraph (3); and

- (b) where such evidence is not obtained, the business relationship or one-off transaction in question shall not proceed any further.

(3) The circumstances referred to in paragraph (2) are as follows—

- (a) where any transaction involves the prescribed amount;
- (b) where transactions carried out in a single operation or in several operations appear to be linked;
- (c) where a transaction is carried out by means of wire transfers;
- (d) where there is any doubt about the veracity or adequacy of previously obtained evidence of identity;
- (e) where the reporting entity is required to make a report under section 94 or 95 of the Act.

(4) For the purposes of paragraphs (1) and (2), where the applicant for business is a body corporate—

- (a) the reporting entity shall carry out reasonable due diligence procedures concerning the identification of the body corporate and transaction verification; and
- (b) evidence that such procedures have been carried out shall be sufficient.

(5) In this regulation—

“customer information” includes the applicant for business’s full name, current address, taxpayer registration number or other reference number date and place of birth (in the case of a natural person) and, where applicable, the information referred to in regulation 13(1) (c);

“prescribed amount” has the meaning assigned to it in regulation 3(8).

De minimis
amounts not
requiring
identifica-
tion.

8.—(1) The identification procedures set out in regulation 7 shall not be required in the case of customer transactions of a value of two hundred and fifty dollars or less in the currency of the United States of America or its equivalent in any other currency, unless the nature of the transaction is suspicious.

(2) The provisions of paragraph (1) do not apply to a money transfer and remittance agent or agency.

Electronic
funds
transfers.

9.—(1) Every regulated business conducting wire transfers or any other electronic funds transfer shall ensure that it receives and includes in its records accurate and relevant information on funds transfers throughout the payment process and chain, including the correct name, address and account number (if any), of the persons involved, any other relevant reference numbers and the instructions given in relation to the transfer.

(2) For the purposes of paragraph (1), "persons involved" means—

- (a) the holder of the account that is the source from which the funds are transferred;
- (b) the person that places the order for the transfer of the funds; and
- (c) every recipient of the funds transferred.

(3) A person who breaches this regulation commits an offence and is liable on conviction before a Resident Magistrate to—

- (a) in the case of an individual, a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or both such fine and imprisonment;
- (b) in the case of a body corporate, a fine not exceeding three million dollars.

10.—(1) Paragraph (2) shall apply in any case where—

- (a) a payment is to be made by an applicant for business;
- (b) it is reasonable in all the circumstances for the payment to be made, or the details thereof to be sent, by post or by telephone or any other electronic means; and
- (c) satisfactory evidence of the identity of the applicant for business would, but for this regulation, be required under identification procedures adopted in accordance with regulation 7.

Payment by
post, etc.

(2) The fact that the payment is debited from an account held in the applicant's name at any of the financial institutions specified in paragraph (4) (whether the account is held by the applicant alone or jointly with one or more other persons) shall constitute the required evidence of identity for the purpose of regulation 7.

(3) For the purposes of paragraph (1), it shall be immaterial whether the payment or its details are sent or given to a regulated business or to some other person acting on its behalf.

(4) The financial institutions referred to in paragraph (1) are—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;

(c) a building society registered under the Building Societies Act;

(d) a society registered under the Co-operative Societies Act.

Identification
procedures *re*
transactions
on behalf of
another.

11.—(1) This regulation applies where, in relation to any relevant financial business, a person is, or appears to be an agent.

(2) For the purposes of this regulation, “agent” means an applicant for business who acts otherwise than as principal.

(3) Identification procedures maintained by a regulated business are in accordance with this regulation if, in a case to which this regulation applies, the regulated business requires reasonable measures to be taken for the purpose of—

(a) establishing the identity of the principal; and

(b) verifying that the agent is authorized to act on behalf of the principal.

(4) In determining for the purposes of paragraph (3), what constitutes reasonable measures in any particular case, regard shall be had to all the circumstances of the case and, in particular, to the best practice which, for the time being, is followed in the relevant field of business and is applicable to those circumstances.

(5) Without prejudice to the generality of paragraph (4), if the conditions mentioned in paragraph (6) are fulfilled in relation to an agent (whether the principal is undisclosed or disclosed for reference purposes only) it shall be reasonable for a regulated business to accept a written assurance from the agent to the effect that evidence of the identity of any principal on whose behalf the agent may act in relation to the regulated business has been obtained and recorded under procedures maintained by the agent.

(6) The conditions referred to in paragraph (5) are that, in relation to the business relationship or transaction in question, there are reasonable grounds for believing that—

(a) the agent is based or incorporated in, or formed under the law of, a country in which there are in force provisions at least equivalent to those mentioned in Part V of the Act; and

(b) the agent—

(i) would be a regulated business if the agent were situated in Jamaica; and

(ii) acts in the course of a business in relation to which a foreign regulatory authority exercises regulatory functions and control.

Identification
procedures,
exemption.

12.—(1) Subject to paragraph (2), where—

- (a) there are reasonable grounds for believing that the applicant for business is a regulated business; or
- (b) any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who identifies the third party and has provided an assurance in accordance with paragraph (2),

regulations 7 and 11 shall be construed as entitling the reporting entity to exercise its discretion as to whether or not to require any steps to be taken to obtain evidence of the identity of the applicant for business.

(2) The assurance referred to in paragraph (1) is that evidence of the identity of all third parties introduced by that person will have been obtained and recorded under procedures maintained by him and—

- (a) that person falls within sub-paragraph (1) (a) ; or
- (b) there are reasonable grounds for believing that the conditions mentioned in regulation 11 (5) (a) and (b) are fulfilled in relation to that person.

(3) Nothing in this regulation shall apply in circumstances where any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering or that the transaction is carried out on behalf of another person engaged in money laundering.

Identification
procedures,
supplemen-
tary
provisions.

13.—(1) For the purposes of these Regulations, evidence of identity is satisfactory if—

- (a) it is reasonably capable of establishing that the applicant for business is the person he claims to be;
- (b) the person who obtains the evidence is reasonably satisfied, in accordance with the procedures maintained under these Regulations in relation to the regulated business concerned, that such evidence establishes the fact that the applicant for business is the person he claims to be;
- (c) in the case of any transaction involving—
 - (i) a settlement, trust or other type of legal arrangement, it establishes the identity of the settlor, legal owner or other person who exercises effective control of the legal arrangement, as the case may require, and the beneficial owner;
 - (ii) a person other than a natural person, it establishes—

- (A) the identity of the natural persons who exercise ultimate effective control over that person; and

