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THE PROCEEDS OF CRIME ACT

THE PROCEEDS OF CRIME (MONEY LAUNDERING PREVENTION)
(AMENDMENT) REGULATIONS, 2019

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

Citation and
construction.

1. These Regulations may be cited as the Proceeds of Crime (Money Laundering Prevention) (Amendment) Regulations, 2019, and shall be read and construed as one with the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007 (hereinafter referred to as the “principal Regulations”), and all amendments thereto.

Amendment
of regulation
2 of principal
Regulations.

2. Regulation 2 of the principal Regulations is amended by inserting in the appropriate alphabetical sequence the following definitions—

“control” in relation to—

- (a) a company, means the power of a person (whether acting alone or jointly with another) to secure, by the holding of, or beneficial entitlement to, twenty-five percent or more of the voting rights in the company, that the affairs of the company are conducted in accordance with the wishes of that person;
- (b) any other entity, means the power of a person to determine the policy of the entity or to make a final attachment as to the decisions to be made by the entity;

“group” in relation to a regulated business that is a company means that company and—

- (a) any other company that is its holding company;
- (b) any other company that is a subsidiary of the holding company;
- (c) any company that directly or indirectly controls or is controlled, directly or indirectly, by any company referred to in paragraph (a) or (b);
- (d) any company that effectively controls or is effectively controlled by any company referred to in paragraph (a) or (b); and
- (e) any company that is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c);

“ultimate beneficial owner” means—

- (a) in relation to a body corporate, the individual who ultimately owns or controls that body corporate;
- (b) in relation to an applicant for business, the individual on whose behalf the applicant for business conducts the business or one-off transaction concerned;
- (c) in the case of a trust, settlement or other legal arrangement, the individual who ultimately owns or controls the trust, settlement, or other legal arrangement (as the case may be).”.

Amendment
of regulation
3 of principal
Regulations.

3. Regulation 3 of the principal Regulations is amended—

- (a) by deleting paragraph (1) and substituting therefor the following—

“ (1) In respect of each month, a financial institution shall, within fifteen days after the end of the month, make a report to the designated authority—

- (a) as to each cash transaction, involving the prescribed amount, carried out by any person with that institution during that month; or
- (b) if no transactions referred to in paragraph (a) have been carried out during the month concerned, stating that no such transactions have been carried out.”;
- (b) in paragraph (4) by deleting the word “existence” and substituting therefor the words “nature or contents”;
- (c) in paragraph (7) by deleting the words “four hundred thousand” and substituting therefor the words “one million”.

Amendment
of regulation
5 of principal
Regulations.

4. Regulation 5 of the principal Regulations is amended—

- (a) in paragraph (1) by inserting immediately after the word “necessary” the words “, taking into account the size and nature of the business concerned,”;
- (b) in paragraph (2)(e) by deleting all the words after the words “within that group” and substituting therefor the words “, including such programmes, policies, procedures and controls as—
 - (i) permit the disclosure of information between companies within the group, for the purposes of customer identification, transaction verification, and risk management, other than information that is protected from such disclosure (whether by this Act or any other law); and
 - (ii) ensure the safeguarding of confidentiality and govern the use of the information disclosed within the group.”;
- (c) in paragraph (3) by deleting the word “officer” and substituting therefor the word “employee”;

(d) by deleting paragraph (5) and substituting therefor the following—

“ (5) A regulated business that fails to comply with paragraph (1) or (3) commits an offence and is liable, in the case of—

(a) an individual, upon conviction before—

(i) a Parish Court, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years; or

(ii) a Circuit Court, to a fine, or imprisonment for a term not exceeding twenty years;

(b) a body corporate upon conviction before—

(i) a Parish Court, to a fine not exceeding five million dollars; or

(ii) a Circuit Court, to a fine.”.

Amendment
of regulation
6 of principal
Regulations.

5. Regulations 6 of the principal Regulations is amended in—

(a) paragraph (2)(a)(i) by deleting the words “one million dollars or to imprisonment for a term not exceeding twelve months” and substituting therefor the words “three million dollars or to imprisonment for a term not exceeding three years”;

(b) paragraph (2)(a)(ii) by deleting the word “three” and substituting therefor the word “five”.

Amendment
of regulation
7 of principal
Regulations.

6. Regulation 7 of the principal Regulations is amended—

(a) in paragraph (1)—

(i) by deleting the word “; and” at the end of sub-paragraph (a)(ii) and substituting therefor a comma, and inserting next thereafter back to the margin of sub-paragraph (a) the words “and that risk management measures are applied to the conditions under which the business relationship or one-off transaction is dealt with while identification procedures to verify the applicant’s identity are being carried out;

(ii) by deleting sub-paragraph (b) and substituting therefor the following—

“(b) where the regulated business is unable to verify the applicant’s identity within

fourteen days after the contact is first made, paragraph (4B)(a) and (b) shall apply.”;

- (iii) by deleting sub-paragraph (d) and substituting therefor the following—

“(d) where customer information is not updated as required under sub-paragraph (c)—

- (i) the business relationship in question shall not proceed any further; and
- (ii) the regulated business shall make in respect thereof all required dis-closures under section 94 of the Act (disclosure as to transactions which could constitute or be related to money laundering).”;

- (b) by inserting next after paragraph (1), the following paragraph—

“ (1A) Guidelines issued by the competent authority for the purposes of paragraph (1)(b) may include—

- (a) limitations on the number or types of transactions that may be performed; and
- (b) requirements for monitoring large or complex transactions that are outside of the norm for the business relationship or one-off transaction in question.”;

- (c) in paragraph (4) by deleting the word “For” and substituting therefor the words “Subject to paragraph (4A), for”;

- (d) by inserting next after paragraph (4) the following paragraphs—

“ (4A) In any case where the regulated business has reasonable grounds to—

- (a) suspect that a business relationship or one-off transaction constitutes or could be related to money laundering; and
- (b) believe that carrying out due diligence procedures as required under paragraph (4)

might have the effect of alerting any person that a suspicion has been formed as described in paragraph (a),

the regulated business shall, instead of performing the due diligence procedures, make the required report under section 94 or 95 of the Act (as the case may be).

(4B) Where a regulated business is not satisfied, on the outcome of any of the due diligence procedures required to be conducted under these Regulations in respect of any business relationship or one-off transaction, that there are no reasonable grounds to suspect that the business relationship or one-off transaction constitutes or could be related to money laundering—

- (a) the business relationship or one-off transaction shall not proceed any further, unless conducted with the permission of, and in accordance with guidelines issued by, the competent authority; and
 - (b) the regulated business shall make an assessment as to whether any disclosure is required under section 94 of the Act (disclosure as to transactions that constitute or are related to money laundering).”;
- (e) in paragraph (5)—
- (i) by deleting the definition of “customer information” and substituting therefor the following—
““customer information” includes—

- (a) the applicant for business’ full name, current address, taxpayer registration number or other reference number, date and place of birth and mother’s maiden name (in the case of an individual) and, where applicable, the information referred to in regulation 13(1)(c); and
- (b) any other information used to verify the applicant for

business's identity or the nature of the applicant for business's trade, profession or source of funds;";

- (ii) in the definition of "satisfactory evidence" by inserting next after the words "shall include" the word "reliable".

Amendment
of regulation
7A of
principal
Regulations.

7. Regulation 7A of the principal Regulations is amended—

- (a) by deleting paragraph (1) and substituting therefor the following—

“ (1) A business in the regulated sector shall establish—

- (a) a risk profile regarding its operations generally, having regard, for example, to its business products offered, its distribution channels, the national, regional and international environment in which the regulated business operates and the size and nature of its operations; and
- (b) a risk profile regarding all its business relationships and one-off transactions, with a view to determining the level of risk for each,

and shall employ measures commensurate with the risks identified to effectively mitigate those risks, but shall not apply simplified due diligence procedures in respect of a business relationship or one-off transaction which the regulated business determines to be high-risk.”;

- (b) in paragraph (2) by—

- (i) deleting the word “or” at the end of sub-paragraph (d), renumbering sub-paragraph (e) as sub-paragraph (f), and inserting the following as sub-paragraph (e)—

“(e) not the ultimate beneficial owner of the assets concerned in the business relationship or one-off transaction; or

- (ii) deleting, from sub-paragraph (f) (as renumbered), the full stop after the word “*Gazette*”, substituting therefor a comma, and inserting back to the margin of the paragraph the words “and where the applicant for business was, but is no longer, a person referred to in paragraph (b), shall determine whether the level of risk of money laundering involved nevertheless requires

the application of enhanced due diligence procedures.”;

- (c) in paragraph (5)(b) by deleting the words “funds or wealth” and substituting therefor the words “funds and wealth”;
- (d) by inserting next after paragraph (5) the following paragraphs—

“ (5A) Subject to paragraph (1), where a business relationship or one-off transaction is determined to be low-risk, a business in the regulated sector may apply simplified due diligence procedures with respect thereto if the conditions set out in paragraph (5B) are met.

(5B) The conditions are that—

- (a) a proper evaluation of the risk was conducted by the regulated business, which justifies the adoption of the simplified due diligence procedures;
- (b) the regulated business has identified and documented the risks of money laundering involved and—
 - (i) implements appropriate controls and systems to reduce or mitigate those risks; and
 - (ii) reviews the risks identified, and the controls and systems to reduce or mitigate those risks, on an ongoing basis, and to ensure the employment of enhanced due diligence procedures should there be any change in circumstances which renders the business

relationship or one-off
transaction high-risk;
and

- (c) having regard to guidance given by the competent authority concerned, the matter is an appropriate one for the application of simplified due diligence procedures after taking into account the product features of the relevant business, such as—
 - (i) threshold limits for the value of transactions;
 - (ii) whether or not cross-border transactions are permitted;
 - (iii) the existence of features that do not permit or facilitate anonymous use of the product; and
 - (iv) whether or not face-to-face transactions are permissible,

and any other factors that the competent authority and the designated authority consider relevant.

(5C) For the purposes of paragraph (5A), simplified due diligence procedures include any one or more of the following—

- (a) requiring only one form of Government-issued identification from the applicant for business concerned, or accepting forms of identification other than Government-issued identification;
- (b) accepting identification verification from third parties who are under analogous obligations with respect to customer identification and transaction verification procedures as concerns the prevention of money laundering;

- (c) collecting only basic identification information, such as names, addresses and dates of birth or, in the case of bodies corporate, dates and places of incorporation;
- (d) reliance on publicly available documents or such other documents as the competent authority may specify; or
- (e) such other procedures as the competent authority may specify.”;
- (e) in paragraph (7), in the definition of “close associate” by inserting next after the words “any other form” the words “(whether as a beneficial owner or otherwise)”.

Insertion of
new
regulation 7B
in principal
Regulations.

8. The principal Regulations are amended by inserting next after regulation 7A the following regulation—

“Enhanced
money
laundering
counter-
measures.

7B. In respect of any business relationship or transaction with any class or category of persons specified under regulation 7A(2)(f) or any applicant for business resident or domiciled or, in the case of a body corporate, incorporated, in a territory specified in a list published under section 94A of the Act, the competent authority may direct that businesses in the regulated sector—

- (a) impose such limits, on those business relationships or transactions, as may be specified in writing by the competent authority for that purpose (whether in the form of limits based on threshold amounts, prohibitions as to transactions with specified persons, or otherwise);
- (b) provide any reports required under these Regulations at more frequent intervals, as specified in the direction;
- (c) carry out, or permit to be carried out, such additional audit requirements as may be specified in the direction; and
- (d) not rely on any assurance referred to in regulation 12 for the purposes of verifying the identity of the person or applicant for business.”.

Amendment
of regulation
8 of principal
Regulations.

9. Regulation 8 of the principal Regulations is amended in paragraph (1) by deleting the full stop at the end of sub-paragraph (b), substituting therefor a comma, and inserting next thereafter back to the margin of paragraph (1) the words “or in the case of any category of regulated business specified by the Minister by order published in the *Gazette*, on the recommendation of the competent authority and the designated authority”.

Amendment
of regulation
9 of principal
Regulations.

10. Regulation 9 of the principal Regulations is amended—

(a) by deleting paragraph (1) and substituting therefor the following—

“ (1) Every regulated business conducting wire transfers or any other electronic funds transfer shall ensure that it—

(a) receives and includes in its records accurate and relevant information on those transfers, throughout the payment process and chain, including the correct name, address and account number (if any), of the persons involved, the reference number assigned to the transaction, any other relevant reference numbers, and the instructions given in relation to the transfer;

(b) identifies and verifies the identity of the recipient of the funds transferred, in the case of transfers involving an amount exceeding five hundred dollars in the currency of the United States of America or its equivalent in any other currency; and

(c) has in place risk-based policies and procedures for determining whether to execute, reject or suspend the transfer where the identification referred to in paragraph (b) is not made and verified.”;

(b) in paragraph (2A) by deleting the words “one thousand” and substituting therefor the words “five hundred”;

(c) by deleting paragraph (3) and substituting therefor the following—

“ (3) A person who contravenes this regulation commits an offence and is liable, in case of—

(a) an individual, upon conviction before—

(i) a Parish Court, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment; or

- (ii) a Circuit Court, to a fine or imprisonment for a term not exceeding twenty years; or

- (b) a body corporate, upon conviction before—

- (i) a Parish Court, to a fine not exceeding five million dollars; or

- (ii) a Circuit Court, to a fine.”.

Amendment
of regulation
11 of
principal
Regulations.

11. Regulation 11 of the principal Regulations is amended in paragraph (3) by deleting—

- (a) the words “requires reasonable measures to be taken” and substituting therefor the words “takes reasonable measures”;
- (b) from sub-paragraph (a)—
 - (i) the words “establishing the identity of and substituting therefor the words “identifying, and verifying the identity of”;
 - (ii) the words “beneficiary and the ultimate”.

Amendment
of regulation
12 of
principal
Regulations.

12. Regulation 12 of the principal Regulations is amended in paragraph (1A)(a) by deleting the words “or without delay upon request by the regulated business” and substituting therefor the words “and, in any event, within fifteen days after the introduction”.

Amendment
of regulation
13 of
principal
Regulations.

13. Regulation 13 of the principal Regulations is amended in—

- (a) paragraphs (1)(a) and (b) by inserting next after the words “is the person he claims to be” in each case the words “and all persons on whose behalf he acts in relation to that business are the persons he claims them to be”;
- (b) paragraph (1)(c)(i), by deleting the word “and” at the end of sub-paragraph (A), inserting the word “and” at the end of sub-paragraph (B), and inserting next thereafter the following as sub-paragraph (C)—
 - “(C) in the case of an insurance contract, it identifies, and verifies the identity of, the beneficiary;”;
- (c) paragraph (1)(c)(ii) by deleting sub-paragraph (A) and substituting therefor the following—
 - “(A) it identifies and verifies the identity of the individuals who hold ten percent or more of the ownership of that person and the individuals who exercise ultimate effective control over that person; or”;

- (d) paragraph (1)(c)(ii)(B) by deleting the words “, it establishes the identity of” and substituting therefor the words “or there is doubt about that individual’s identity, it identifies, and verifies the identity of,”;
- (e) paragraph (1)(c)(iii) by deleting the words “(other than a body corporate listed on a stock exchange)”;
- (f) paragraph (1)(c)(iii)(A), by—
 - (i) deleting the words “establishes the identity of” and substituting therefor the words “identifies, and verifies the identity of,”;
 - (ii) inserting next after the words “voting rights” the words “, or ownership,”;
- (g) paragraph (1) by deleting the full stop at the end of sub-paragraph (c)(iii)(C), substituting therefor the word “; and”, and inserting the following as sub-paragraph (D)—
 - “(D) in the case of a legal arrangement involving life insurance—
 - (i) it identifies, and verifies the identity of, the beneficiary at the time of pay-out; and
 - (ii) in any case where the beneficiary is designated other than by name (for example, by reference to characteristics or a class), it obtains sufficient information to enable it to identify, and verify the identity of, the beneficiary at the time of pay-out, and the regulated business shall take the identity of the beneficiary into account in determining whether enhanced due diligence measures should be applied under regulation 7A(4).”.

Amendment
of regulation
14 of
principal
Regulations.

14. Regulation 14 of the principal Regulations is amended—

- (a) in paragraph (1) by deleting the word “person” and substituting therefor the words “regulated business”;
- (b) by deleting paragraph (4) and substituting therefor the following—
 - “(4) In relation to all relevant financial business—
 - (a) a record shall be kept of—
 - (i) each transaction; and
 - (ii) all correspondence, and analysis undertaken, in relation to each

transaction and business
relationship,

in such manner and form as shall facilitate the reconstruction of transactions and the provision of information to the designated authority or competent authority upon request no later than seven days after the request or as may otherwise be required under the Act, these Regulations or any other enactment; and

- (b) account files shall be kept, in relation to each customer, containing all pertinent information in respect of each of the customer's accounts with the regulated business (including customer information, types of accounts held and a summary of the activities in respect of each account)."

Amendment
of regulation
18 of
principal
Regulations.

15. Regulation 18 of the principal Regulations is amended—

- (a) in paragraph (2) by deleting sub-paragraphs (a) and (b) and substituting therefor the following—

"(a) the branch or subsidiary advises it of such inability, and applies appropriate measures to minimise the risk of money laundering posed to the regulated business; and

(b) the regulated business advises the component authority concerned of the inability, the reason therefor, and the measures taken to minimise the risk of money laundering posed to the regulated business."; and

- (b) by deleting paragraph (3) and substituting therefor the following—

" (3) A person who contravenes this regulation commits an offence and is liable, in the case of—

- (a) an individual, upon conviction before—

- (i) a Parish Court, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment; or

- (ii) a Circuit Court, to a fine, or to imprisonment for a term not exceeding twenty years; or

(b) a body corporate, upon conviction before—

(i) a Parish Court, to a fine not exceeding five million dollars; or

(ii) a Circuit Court, to a fine.”.

Insertion of
new
regulations
20 and 21 in
principal
Regulations.

16. The principal Regulations are amended by inserting next after regulation 19 the following regulations—

“Offences.

20.—(1) A business in the regulated sector that contravenes regulation 7, 7A, 7B, 11, 14, 15, 16 or 17 commits an offence and shall be liable upon conviction before—

(a) a Parish Court, to a fine not exceeding five million dollars; or

(b) a Circuit Court, to a fine.

(2) The offences specified in Column A of Part I the Second Schedule are offences to which a fixed penalty may apply in accordance with section 138(2) of the Act, and the amount set out in Column B of Part I of the Second Schedule shall be the amount of the fixed penalty for the respective offence.

Fixed penalty
notice.

21. A fixed penalty notice for the purposes of section 138(3) of the Act shall be in the form set out in Part II of the Second Schedule.”.

Renumbering
of Schedule
and insertion
of Second
Schedule.

17. The principal Regulations are amended by renumbering the Schedule as the First Schedule, deleting all references to the Schedule and substituting therefor in each case a reference to the First Schedule, and inserting the following as the Second Schedule—

SECOND SCHEDULE

(Regulation 20)

Part I—Fixed Penalties

Column A		Column B	
<u>Offence</u>		<u>Fixed Penalty</u>	
		In case of—	
		(1) an individual	(2) a body corporate
		\$	\$
1.	An offence under regulation 5(5), failure to comply with—		
	(a) regulation 5(1) ...	2,100,000	3,500,000
	(b) regulation 5(3) ...	2,100,000	3,500,000
2.	An offence under regulation 6(2) ...	2,100,000	3,500,000
3.	An offence under regulation 18(3) ...	2,100,000	3,500,000
4.	An officer under regulation 20(1) ...	2,100,000	3,500,000

SECOND SCHEDULE, *contd.*

Part II—Fixed Penalty Notice

THE PROCEEDS OF CRIME ACT

The Proceeds of Crime (Money Laundering
Prevention) Regulations, 2007*Fixed Penalty Notice*

FRONT OF FORM

Serial No. of Notice:

Take notice that I have cause to believe that on the _____ day of
_____, 20_____ at (enter location) at or about (enter time)
you: _____
Surname First name Middle name
of _____ in the parish of
address

_____ committed one or more of the following
offences contrary to the provisions of the Proceeds of Crime (Money Laundering
Prevention) Regulations, 2007, for which I allege that you are liable—

(Please tick Regulation
alleged offence)

Offence
_____☐ 5(5)

Failure to comply with regulation 5(1)—
requirement to establish and implement
programmes, policies, procedures and
controls necessary for the purpose of
preventing or detecting money laundering.

☐ 5(5)

Failure to comply with regulation 5(3)—
requirement to nominate employee to be
responsible for implementing programmes,
etc.

SECOND SCHEDULE, *contd.*

(Please tick alleged offence)	Regulation —	Offence —
☐	6(2)	Non-compliance with regulation 6(1) in forming a business relationship or carrying out a one-off transaction.
☐	18(3)	Failure to comply, implement and conform with, or to advise of inability to conform with, <i>etc.</i> , standards and conduct set out in Part V of the Act and in the Regulations.
	20(1)	Failure to comply with regulation—
☐		(a) 7— requirements regarding identification and transaction verification procedures, <i>etc.</i> ;
☐		(b) 7A— requirement to establish risk profile and carry out due diligence;
☐		(c) 11— requirements regarding identification procedures concerning transactions carried out by agents;
☐		(d) 14— record-keeping requirements;
☐		(e) 15— requirements for internal reporting procedures;
☐		(f) 16— prohibition on conducting transaction by means of numbered account, anonymous account or account in a fictitious names;
☐		(g) 17— requirements as to form of reports.

SECOND SCHEDULE, *contd.*

Particulars of offence(s):

Date of offence(s):

Date of offence(s):

Place of offence(s):

Brief description of the acts constituting the offence(s):

However, if before the _____ day of _____, 20____ (insert date being a date not earlier than the expiration of fifteen days) you pay the fixed penalty of \$ _____ to the Collector of Taxes proceedings will not be taken for the offence and you shall not be liable to conviction of the offence. Payments should be made in accordance with the instructions overleaf.

SECOND SCHEDULE, *contd.*

If you do not pay the fixed penalty within the period specified above, you are required to attend before [specify court having jurisdiction to try the offence(s)] to answer to the charge(s) for the offence(s).

Dated this _____ day of _____, 20 _____.

Signature of authorised officer

BACK OF FORM

How to pay fixed penalty:

Payment may be made in cash at any collectorate of taxes.

To: [full name and address]

I enclose the sum of \$ _____ as payment of the fixed penalty for the offence mentioned in this notice.

Surname

First Name

Middle Name

Address

Parish

Dated this 29th day of October, 2019.

HORACE CHANG
Minister of National Security.