

CAYMAN ISLANDS



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**THE PROCEEDS OF CRIMINAL CONDUCT LAW
(2005 REVISION)**

THE MONEY LAUNDERING (AMENDMENT) REGULATIONS, 2007

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ARRANGEMENT OF REGULATIONS

1. Citation.
2. Amendment of regulation 2 of the Money Laundering Regulations (2006 Revision) – definitions.
3. Amendment of regulation 5 - systems and training to prevent money laundering.
4. Amendment of regulation 7 - identification procedures; business relationships and transactions.
5. Amendment of regulation 9 - identification procedures; transactions on behalf of another.
6. Amendment of regulation 14 - internal reporting procedures.
7. Amendment of heading of Part VI - Duty to Report Evidence of Money Laundering.
8. Repeal and replacement of regulation 15 – application.
9. Insertion of Part VII - **Identification and Record Keeping Requirements relating to Wire Transfers.**
10. Transitional provisions.

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**THE PROCEEDS OF CRIMINAL CONDUCT LAW
(2005 REVISION)**

THE MONEY LAUNDERING (AMENDMENT) REGULATIONS, 2007

The Governor in Cabinet, in exercise of the powers conferred by section 21 of the Proceeds of Criminal Conduct Law (2005 Revision), makes the following regulations -

1. These regulations may be cited as the Money Laundering (Amendment) Regulations, 2007. Citation

2. The Money Laundering Regulations (2006 Revision), in these regulations referred to as the “principal Regulations”, are amended in regulation 2 as follows - Amendment of
regulation 2 of the
Money Laundering
Regulations (2006
Revision) - definitions

(a) in subregulation (1) -

(i) by inserting the following definitions in their appropriate alphabetical sequence -

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

“intermediary payment service provider” means a payment service provider, neither of the payer nor of the payee, that participates in the execution of transfers of funds;

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

“payer” means either a person who holds an account and allows a transfer of funds from that account, or, where there is no account, a natural or legal person who places an order for a transfer of funds;

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

“terrorist financing” means doing any act which constitutes an offence under sections 19 to 22 of the Terrorism Law, 2003 or, in the case of an act done otherwise than in the Islands, would constitute such an offence if done in the Islands;

“transfer of funds” means any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, 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 payment service provider, in accordance with the protocols of the payment and settlement system or messaging system used to effect the transfer of funds.”; and

- (ii) by deleting the definition of “money laundering” and substituting the following definition -

“ “money laundering” means doing any act which constitutes an offence under section 47 or 48 of the Misuse of Drugs Law (2000 Revision), sections 19 to 22 of the Terrorism Law, 2003 or sections 32 to 34 of the Law or, in the case of an act done otherwise than in the Islands, would constitute such an offence if done in the Islands;”; and

- (b) by inserting after subregulation (1) the following subregulation -

“ (1a) For the purposes of Part VII, complete information on a payer shall consist of –

- (a) his name;
- (b) (i) his address;
- (ii) his date and place of birth;
- (iii) his customer identification number; or
- (iv) the number of a Government-issued document evidencing his identity; and
- (c) his account number or a unique identifier which allows the transaction to be traced back to the payer.”.

Amendment of
regulation 5 - systems
and training to prevent
money laundering

- 3. The principal Regulations are amended in regulation 5 as follows –

- (a) in subregulation (1)(a)(iv) by inserting after the words “internal control” the words “(including an appropriate internal audit function)”; and
- (b) by inserting after subregulation (1)(a) the following paragraph –
“(aa)complies with the identification and record keeping requirements of Part VII;”.

4. The principal Regulations are amended in regulation 7 by repealing subregulation (3) and substituting the following subregulation -

Amendment of
regulation 7 -
identification
procedures; business
relationships and
transactions

- “ (3) Case 2 is any case where, in respect of any one-off transaction, a person handling the transaction -
- (a) knows or suspects that the applicant for business is engaged in money laundering other than terrorist financing, or that the transaction is carried out on behalf of another person engaged in money laundering other than terrorist financing; or
 - (b) knows or has reasonable cause to suspect that the applicant for business is engaged in terrorist financing, or that the transaction is carried out on behalf of another person engaged in terrorist financing.”.

5. The principal Regulations are amended in regulation 9(4) by inserting after the words “by the applicant for business” the words “; but a person bound by regulation 5(1) remains liable for any failure to so obtain and record satisfactory evidence of such identity”.

Amendment of
regulation 9 -
identification
procedures; transactions
on behalf of another

6. The principal Regulations are amended in regulation 14 as follows –

Amendment of
regulation 14 - internal
reporting procedures

- (a) by repealing paragraph (a) and substituting the following paragraph -
“(a) identifying a person (“the appropriate person”) to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business gives rise to -
 - (i) a knowledge or suspicion that another person is engaged in money laundering other than terrorist financing; or
 - (ii) a knowledge or reasonable suspicion that another person is engaged in terrorist financing;” and
- (b) by repealing paragraph (d) and substituting the following paragraph -

		“(d) for securing that the information or other matter contained in a report is disclosed to the Reporting Authority where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this regulation - (i) knows or suspects that another person is engaged in money laundering other than terrorist financing; or (ii) knows or has reasonable cause to suspect that another person is engaged in terrorist financing.”.
Amendment of heading of Part VI - Duty to Report Evidence of Money Laundering	7.	The principal Regulations are amended in the heading of Part VI by inserting after the words “ Money Laundering ” the words “ Other Than Terrorist Financing ”.
Repeal and replacement of regulation 15 - application	8.	The principal Regulations are amended by repealing regulation 15 and substituting the following – “Application 15. (1) Subject to subregulation (2), this Part applies to the Authority and to a minister or official member in the exercise, in relation to any person carrying on relevant financial business, of his statutory or official functions. (2) This Part does not apply to any disclosure of information to which Part 2 of Schedule 1 to the Terrorism Law, 2003 relates.”.
Insertion of Part VII - Identification and Record Keeping Requirements relating to Wire Transfers	9.	The principal Regulations are amended by inserting after regulation 16 the following Part - “ PART VII –Identification and Record Keeping Requirements relating to Wire Transfers ”
	Application of this Part	17. (1) Subject to subregulations (2) and (3), this Part applies to transfers of funds, in any currency, which are sent or received by a payment service provider carrying on business in or from within the Islands. (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 payment service provider 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 -
 - (a) where the payer withdraws cash from his or her own account;
 - (b) where there is a debit transfer authorisation between two parties permitting payments between them through accounts, if a unique identifier accompanies the transfer of funds, enabling the person to be traced back;
 - (c) where truncated cheques are used;
 - (d) for fines, duties or other levies within the Islands; or
 - (e) where both the payer and the payee are payment service providers acting on their own behalf.

Information
accompanying transfers
of funds and record
keeping

18. (1) Subject to regulation 19, a payment service provider of a payer shall ensure that transfers of funds are accompanied by complete information on the payer.

(2) The payment service provider of the payer shall, before transferring the funds, verify the complete information on the payer on the basis of documents, data or information that meet the requirements of regulation 11(1).

(3) In the case of transfers of funds from an account, verification may be deemed to have taken place if -

- (a) the payer's account is held at a licensee under the Banks and Trust Companies Law (2003 Revision); or
- (b) the payer is a person who is bound by regulation 5(1);

but regulation 8(2)(a) and (b) shall, with necessary changes, apply.

(4) The payment service provider of the payer shall for five years keep records of complete information on the payer which accompanies transfers of funds.

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| Transfers of funds within the Islands | 19. Where both the payment service provider of the payer and the payment service provider of the payee are situated in the Islands, transfers of funds shall be required to be accompanied only by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer; but, if so requested by the payment service provider of the payee, the payment service provider of the payer shall make available to the payment service provider of the payee complete information on the payer, within three working days of receiving that request. |
| Batch file transfers | 20. In the case of batch file transfers from a single payer where the payment service providers of the payees are situated outside the Islands, regulation 18(1) shall not apply to the individual transfers bundled together therein, if the batch file contains that information and the individual transfers carry the account number of the payer or a unique identifier. |
| Obligations of payment service provider of payee | <p>21. The payment service provider of a payee shall have effective procedures in place in order to detect whether, in the messaging or payment and settlement system used to effect a transfer of funds, the following information on the payer is missing -</p> <ul style="list-style-type: none">(a) for transfers of funds where the payment service provider of the payer is situated in the Islands, the information required under regulation 19;(b) for transfers of funds where the payment service provider of the payer is situated outside the Islands, complete information on the payer, or where applicable, the information required under regulation 26; and(c) for batch file transfers where the payment service provider of the payer is situated outside the Islands, information on the payer as referred to in regulation 20 in the batch file transfer only, but not in the individual transfers bundled therein. |

Transfers of funds with missing or incomplete information on the payer	<p>22. (1) Where the payment service provider of the payee detects, when receiving transfers of funds, that information on the payer required under this Part is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer; and, in any event, the payment service provider of the payee shall comply with the Law, the Terrorism Law, 2003 and these Regulations.</p> <p>(2) Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall adopt reasonable measures to have the payment service provider of the payer correct the failures, before –</p> <ul style="list-style-type: none">(a) rejecting any future transfers of funds from that payment service provider;(b) restricting its business relationship with that payment service provider; or(c) terminating its business relationship with that payment service provider; <p>and the payment service provider of the payee shall report to the Reporting Authority and to the Authority any such decision to restrict or terminate its business relationship with that payment service provider.</p>
Risk-based assessment	<p>23. The payment service provider of the payee 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 to the Reporting Authority, in accordance with the Law and these Regulations.</p>
Record keeping by payment service provider of payee	<p>24. The payment service provider of the payee shall for five years keep records of any information received on the payer.</p>
Keeping of information accompanying a transfer of funds	<p>25. Intermediary payment service providers shall ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer.</p>
Technical limitations	<p>26. (1) This regulation applies where the payment service provider of the payer is situated outside the Islands and the</p>

intermediary payment service provider is situated within the Islands, in respect of transfers of funds by the intermediary payment service provider within the Islands.

(2) Subject to subregulation (3), the intermediary payment service provider may use a payment system with technical limitations which prevent information on the payer from accompanying the transfer of funds to send transfers of funds to the payment service provider of the payee.

(3) Where the intermediary payment service provider receives a transfer of funds, that does not have complete information on the payer as required under this Part, it shall only use a payment system with technical limitations if it is able to inform the payment service provider of the payee thereof, using a manner of communication accepted by, or agreed between, both payment service providers.

(4) Where the intermediary payment service provider uses a payment system with technical limitations, the intermediary payment service provider shall, upon request from the payment service provider of the payee, make available to the payment service provider of the payee all the information on the payer which 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 subregulations (2) and (3), the intermediary payment service provider shall for five years keep records of all information received.

Cooperation obligations 27. Payment service providers shall respond fully and without delay to enquiries from the Reporting Authority concerning the information on the payer accompanying transfers of funds and corresponding records.

Conflicts between Parts 28. Where there is an inconsistency between the provisions of this Part and any other provision of these Regulations, the provisions of this Part shall prevail, to the extent of the inconsistency.”.

Transitional provisions 10. No person shall be prosecuted under regulation 5(1)(aa) of the principal Regulations for an offence committed prior to 1 January, 2008.

Made in Cabinet the 1st day of June, 2007.

Carmena Watler

Clerk of the Cabinet.