

ANTIGUA AND BARBUDA



**THE MONEY LAUNDERING (PREVENTION) (REGISTRATION)
REGULATIONS, 2021**

STATUTORY INSTRUMENT

2021, No. 40

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The Money Laundering (Prevention) (Registration) Regulations 2021 made by the Minister in exercise of the powers conferred on him by section 29 of the Money Laundering (Prevention) Act, 1996 No. 9 of 1996.

1. Short title

These Regulations may be cited as the Money Laundering (Prevention) (Registration) Regulations 2021

2. Interpretation

(1) In these Regulations—

“AML/CFT” means anti-money laundering and counter financing of terrorism.

“financial institution” has the same meaning as in the Act.

institutions established and kept under regulation 4;

“Act” means the Money Laundering (Prevention) Act 1996.

“de-register” means revoking the registration of a financial institution under regulation 8.

“Register” means the Register of Financial Institutions required to register and file reports under these regulations.

“Register of Reporting Entities” means the register established under regulation 4.

“registered financial institution” means a financial institution registered under regulation 5;

“relevant business” means a financial institution required to register under these regulations;

“registered entity” means a financial institution registered with and obligated to make reports to the Supervisory Authority under these regulations;

“registrable entity” means any business activity listed in the First Schedule of the Act which is not subject to a licensing regime.

“reporting entity” means a financial institution registered with and obligated to make reports to the Supervisory Authority under these regulations.

“senior officer” means a director, chief executive officer, chief operating officer, president, vice-president, accountant, corporate secretary, compliance officer, or holding any other senior management position.

“significant owner” of a relevant business, means a person who, whether alone or acting together with one or more associates—

- (a) owns, whether legally or beneficially, a 10% or greater interest in the relevant business or its parent;
- (b) has the power, directly or indirectly, to exercise or control the exercise of 10% or more of the voting rights in the relevant business, or its parent; or
- (c) has the power to appoint or remove one or more directors of the relevant business.

“the Register” means the Register of Reporting Entities.

- (2) The “Supervisory Authority” is the Director of the ONDCP pursuant to section 38 of the Office of National Drug and Money Laundering Control Policy Act 2003.

3. Purpose of Regulations

These regulations set out the procedure for financial institutions not subject to a licensing regime, to make their existence known to the Supervisory Authority by applying for registration, and the penalties for failing to register. They set out other related obligations and reporting requirements of registered financial institutions.

PART II — REGISTRATION REQUIREMENTS

4. Establishment and Content of Register of Reporting Entities

- (1) The Supervisory Authority shall establish and keep a register of all registrable entities. The register shall be known as the Register of Reporting Entities (also herein “the Register”), which shall be a record of financial institutions that have registered under this Part and are obligated to make reports under Part III.
- (2) The Supervisory Authority shall record in the Register the following information in respect of each relevant business registered under regulation 5—
 - (a) where it (or part of it) is a corporate body, the name, country of incorporation, date of incorporation, registered office, natural persons who are directors, senior officers and natural, natural and legal persons who are significant owners and natural persons who are beneficial owners;

- (b) where it is a limited liability partnership, the name, country of formation, date of formation, registered office, name of partners;
 - (c) where it is neither a corporate body or limited liability partnership, its name, address, declared form of business, country of creation, date of creation;
 - (a) where a natural person, the name and address;
 - (e) the principal business address, telephone number and e-mail address;
 - (j) the business address in Antigua and Barbuda if different from its principal business address and the business's telephone number and e-mail address;
 - (g) a criminal record certificate of the natural persons who are significant owners, beneficial owners, directors, senior managers, compliance officers;
 - (h) the results of its comparison of the names of owners and senior managers with those of specified and proliferation entities published by the United Nations Security Council Sanctions Committees and
 - (i) such other information as the Supervisory Authority considers appropriate.
- (3) The Register and the information contained in any document filed with the Supervisory Authority, may be kept in such manner as the Supervisory Authority considers appropriate, including either wholly or partly, by means of a device or facility that—
- (a) records or stores information magnetically, electronically or by other means; and
 - (b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

5. Application for Registration

- (1) A person who carries on or intends to carry on business activities of a registrable entity, shall apply to register the business with the Supervisory Authority.
- (2) Application shall be made to the Supervisory Authority's registration unit and the Supervisory Authority, where he deems it necessary or expedient, may require that registration be done through an online website where appropriate facilities are in place.
- (3) An application under sub-regulation (1) shall—

- (a) be in writing and in the form prescribed by the regulations;
 - (b) be signed by the applicant or a natural person acting on behalf of the applicant; and
 - (c) be accompanied by –
 - (i) the information required by regulation 4(2) above and such other information and documents as may be specified by these regulations or elicited by any form required to be completed as part of the application process;
 - (ii) a criminal record certificate for each natural person who is a significant owner, beneficial owner, director, senior manager and compliance officer; and
 - (iii) a non-refundable application fee as prescribed by regulation 13(1) and in the Schedule hereto.
- (4) The Supervisory Authority may require an applicant to—
- (a) provide him with documents and information, in addition to those specified in subregulation 5(3)(c), as he reasonably requires in order to determine the applicant’s eligibility for registration and any such information shall be in such form as the Supervisory Authority may specify; and
 - (b) verify any document and information provided in support of an application in such manner as the Supervisory Authority may specify.
- (5) If, before a certificate of registration pursuant to regulation 6(b) is issued to a financial institution—
- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Supervisory Authority in connection with the application; or
 - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading, the applicant shall, as soon as reasonably practicable, make the necessary correction by providing the Supervisory Authority in writing—
 - (i) particulars of the changed information or documentation,
 - (ii) information or documentation that makes complete what was previously incomplete,

- (iii) information or documentation that makes accurate what was previously inaccurate; or
 - (iv) information or documentation that reveals and corrects what was previously misleading.
- (6) Failing to make the correction required by subsection (5) is an offence, punishable on summary conviction by a fine not exceeding \$30,000;
- (7) Alternatively or in addition, the Supervisory Authority may impose an administrative penalty of \$1,000 for failure to make the correction required by subsection (5).

6 Approval of Application

Following receipt of an application for registration under regulation 5(3) and any supporting documents or information that is required under regulation 5(4), the Supervisory Authority shall—

- (a) determine the eligibility of the applicant to be registered; and either
- (b) approve the application, subject to regulation 7(2) and to payment of the prescribed registration fee, whereon he shall:
 - (i) record the applicant in the Register;
 - (ii) provide the applicant with a certificate of registration as a reporting entity; or
- (c) refuse the application in accordance with regulation 7.

7. Refusal of application

(1) The Supervisory Authority may refuse an application for registration if—

- (a) the application does not comply with regulation 5(3);
- (b) the applicant fails to provide any information or documents required by the Supervisory Authority under regulation 5(4);
- (c) the Supervisory Authority is of the opinion that the applicant is not engaged in relevant business or does not intend to carry on the relevant business for which the applicant seeks registration;

- (a) any senior officer or owner of the applicant or that person's associate is ineligible under section 17 of the Act;
 - (e) the applicant, having previously been registered under these Regulations, has been de-registered under regulation 8.
- (2) The Supervisory Authority shall refuse an application for registration if he has reason to believe that—
- (a) the applicant does not, or on registration will not, have the capacity or willingness to comply with its AML/CFT /CFP obligations or to identify, mitigate and manage the money laundering and terrorism financing risks to which it is exposed;
 - (b) the applicant, or its business, represents a significant money laundering, terrorist financing or proliferation financing risk that cannot be adequately mitigated; or
 - (c) it is contrary to the public interest for the applicant to be registered.
- (3) If the Supervisory Authority refuses an application for registration, he shall send the applicant a written notice of refusal, stating the grounds for refusal.
- (4) The applicant may submit to the Supervisory Authority reasons why the grounds on which application was assess is flawed and request that the Supervisory Authority reconsider his decision. The Supervisory Authority shall then make a final decision within fourteen (14) days of the request.

8. De-Registration

- (1) The Supervisory Authority may de-register a financial institution if—
- (a) subject to sub-regulation 8(2), the financial institution applies to be de-registered; or
 - (b) subject to sub-regulation 8(3), the Supervisory Authority has reasonable grounds to believe—
 - (i) the financial institution is in contravention of any of its AML/CFT/CFP obligations, so as to compromise its AML/CFT/CFP system,
 - (ii) the financial institution does not have the capacity or willingness to comply with its AML/CFT/CFP obligations or to identify, mitigate and manage the

- money laundering, terrorism and proliferation financing risks to which the financial institution is exposed,
- (iii) the financial institution, or its business, represents a significant money laundering or terrorist financing risk which cannot be effectively mitigated,
 - (iv) any of the financial institution's directors, senior officers or owners, has become ineligible to hold that position under section 17 of the Act and the natural or legal person's removal from the position is unlikely to diminish their effective control or influence over the financial institution, or
 - (v) it is in the public interest for the financial institution to be de-registered.
- (2) The Supervisory Authority shall not de-register a financial institution under sub-regulation (1)(a) if the Supervisory Authority is of the opinion that the de-registration of the financial institution would hinder the Supervisory Authority in the exercise of its functions.
- (3) Subject to sub-regulation (4), before de-registering a financial institution under sub-regulation (1)(b), the Supervisory Authority shall give written notice to the financial institution stating—
- (i) the grounds upon which it intends to de-register the financial institution; and
 - (ii) that unless the financial institution, by written response, shows good reason why it should not be de-registered, it will be de-registered on a date not less than 14 days after the date of the notice.
- (4) If it is not practicable for the Supervisory Authority to give notice to the financial institution under paragraph (3)(a), he may de-register the reporting entity by publishing a notice of de-registration in the Gazette.
- (5) Where the Supervisory Authority de-registers a financial institution, he shall mark the name of the financial institution in the Register as de-registered, showing the date of its de-registration.
- (6) The Supervisory Authority, instead of de-registering may suspend the registration of a financial institution for a period considered necessary for the financial institution to become compliant with its AML/CFT/CFP obligations.
- (7) Where a registrable entity, having been de-registered or having had its registration suspended by the Supervisory Authority, continues to do a First Schedule business

activity, the registrable entity commits an offence and is liable on summary conviction to a maximum fine of \$100,000 or on conviction on indictment, to a maximum fine of \$500,000.

- (8) The Supervisory Authority may impose civil sanctions for operating a financial institution under section 8 of the Money Laundering (Prevention) Act 2007.

PART III —REPORTING OBLIGATIONS

9. Report of Changes in Directors and Senior Officers

- (1) All financial institutions registered in the Register of Reporting Entities are required to make reports to the Supervisory Authority as specified in this part and for that purpose are referred to as “reporting entities”.
- (2) A reporting entity shall by written notice, report to the Supervisory Authority any change in its directors or senior officers, whether as a result of a natural person being appointed to hold office or ceasing to hold office.
- (3) A written notice under sub-regulation (1) shall—
 - (a) specify the date of the change;
 - (b) include the full name and address of the natural person to whom the change applies;
 - (c) a criminal record certificate where a natural person is appointed to hold office; and
 - (a) be provided to the Supervisory Authority within 14 days of—
 - (i) the change occurring, in the case of the appointment or ceasing to hold office of a director or senior officer, or
 - (ii) the reporting entity first becoming aware of the change, in the case of the death of a director or senior officer.
- (4) A reporting entity that fails to provide written notice of a change in its directors or senior officers in accordance with this regulation commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.

10. Report on changes in ownership

- (1) A reporting entity shall by written notice, report to the Supervisory Authority any change in its significant ownership, whether as a result of a natural person becoming or ceasing to be a significant owner or a significant owner increasing or decreasing his interest, power to exercise or control voting rights or power to appointment or remove directors in the financial institution.
- (2) A written notice under sub-regulation (1) shall—
 - (a) specify the date of the change;
 - (b) provide the full name and address of the natural person to whom the change applies;
 - (c) provide details of the nature of the change in significant ownership;
 - (a) where the change concerns an increase in ownership or control, provide a criminal record certificate of the natural person to whom it applies; and
 - (e) be provided to the Supervisory Authority within 14 days of—
 - (i) the change in significant ownership occurring, or
 - (ii) the reporting entity first becoming aware of the change, in the case of the death of a significant owner.
- (3) A reporting entity that fails to provide written notice of a change in its significant ownership in accordance with this regulation commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.

11. Reports on material changes

- (1) A reporting entity shall by written notice, report to the Supervisory Authority any change in the information required to be recorded under regulation 4(2).
- (2) A written notice under sub-regulation (1) shall—
 - (a) specify the date of the change;

- (b) set out the details of the change;
 - (c) be provided to the Supervisory Authority within 14 days of the reporting entity first becoming aware of the change.
- (3) A reporting entity that fails to provide written notice of a change in its registered information in accordance with this regulation commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.

PART IV — ADMINISTRATIVE PENALTIES

12. Penalties for administrative breaches

(1) For the purposes of this Part—

“administrative penalty” is a penalty set out in Schedule 1 imposed by the Supervisory Authority for late payment of fees or disciplinary violation.

“disciplinary violation” includes a failure to register as a registrable entity or failure to submit a report to the Supervisory Authority as required by these Regulations.

“late payment of fees” is a failure to pay a registration fee set out in Schedule 2 on or before the date on which the fee becomes due and payable and is in addition to the required fee.

- (2) The Supervisory Authority may impose an administrative penalty on a reporting entity for breach of the regulations. The penalty shall constitute an initial penalty set out in the Schedule imposed on notification of the breach followed by a fixed recurring penalty for each period that the breach continues thereafter.
- (3) For the purposes of determining whether or not a reporting entity has failed to pay a fee or has made a late payment of a fee under these Regulations, a fee is deemed not to have been paid until it has been paid in full.
- (4) The imposition of an administrative penalty becomes final on the occurrence of the following, whichever is the later—
 - (a) the date when, in accordance with these regulations, reporting entity is determined to have committed the disciplinary breach ;
 - (b) the dismissal of any appeal of the reporting entity, provided that the time for any further appeal has expired; or

- (c) the payment of the penalty;

PART V — FEES

13. Fees

- (1) A registrable entity shall pay to the Supervisory Authority the following fees—
 - (a) a non-refundable application fee upon submitting an application for registration under regulation 5;
 - (b) a registration fee upon first being registered under regulation 5; and
 - (c) an annual registration fee to be paid by 31 January of each year of registration.
- (2) The fees are set out in Schedule 2 hereto and are determined by the Class of financial institution listed in Schedule 2.
- (3) Class A financial institutions are relevant businesses with total assets greater than \$100,000 Eastern Caribbean currency. Class B financial institutions are relevant businesses with total assets of XCD\$100,000 Eastern Caribbean currency of less.
- (4) In determining the fees payable by different types, categories and descriptions of financial institution, the Minister shall have regard to the following criteria—
 - (a) the fee chargeable shall take account of the estimated average cost of supervising financial institutions of the particular type, category or description to which the fee will apply;
 - (b) the fees should be set with the objective that the total fees paid to the Supervisory Authority are sufficient—
 - (i) to cover the costs to the Supervisory Authority of discharging its functions under the Act and these Regulations; and
 - (ii) to enable the Supervisory Authority to accumulate a reserve sufficient to cover the costs of ad hoc investigations and other enforcement action that may be required from time to time.
- (5) The Minister may by order published in the Gazette, amend the schedule of fees.

PART VI - FORMS**14. Forms**

The information required to be collected by the Supervisory Authority under regulation 5(3)(c) shall include but not be limited to details elicited by the Forms in Schedule 3 hereof. The Forms are—

- (1) FORM 1 - Application for Registration of Financial Institution not Subject to a Licensing Regime;
- (2) FORM 2 - Annual Inherent Risk Questionnaire;
- (3) FORM 3 - Compliance Officer Fit and Proper Questionnaire;
- (4) FORM 4 - AML/CFT Questionnaire for Reporting Entity.

Made the 14th day of May, 2021

Hon. Gaston Browne,
*Prime Minister and Minister Responsible
for the ONDCP.*