



BERMUDA

CHARITIES (ANTI-MONEY LAUNDERING, ANTI-TERRORIST FINANCING
AND REPORTING) REGULATIONS 2014

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TABLE OF CONTENTS

1	Citation
2	Interpretation
3	General duties of a registered charity
4	Due diligence requirements
5	Systems and controls
6	Record-keeping
7	Internal reporting procedures
8	Training etc.
9	Annual report
10	Offences
11	Commencement

The Minister responsible for charities, in exercise of the power conferred by sections 38 and 47 of the Charities Act 2014, after consulting the NAMLC, makes the following Regulations:

Citation

1 These Regulations may be cited as the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014.

Interpretation

2 In these Regulations, unless the context otherwise requires—

“the Act” means the Charities Act 2014;

“AML” means anti-money laundering;

CHARITIES (ANTI-MONEY LAUNDERING, ANTI-TERRORIST FINANCING AND REPORTING) REGULATIONS 2014

“ATF” means anti-terrorist financing;

“beneficiary”, in relation to a charity, means a natural person, or group of natural persons, receiving charitable, humanitarian or other types of assistance through the services of a charity;

“compliance officer” means an officer of a registered charity designated as such in accordance with regulation 3(a);

“guidance” has the meaning given in section 11 or 13 (as the case may be) of the Act;

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

“officer”, in relation to a charity, includes an employee of that charity;

“partner”, in relation to a charity, means a person who is funded to implement a project or deliver aid on behalf of the charity;

“relevant officer” has the meaning given in regulation 8(2);

“terrorist financing” has the meaning given in section 2 of the Anti-Terrorism (Financial and Other Measures) Act 2004.

General duties of a registered charity

3 Every registered charity shall—

- (a) designate as its compliance officer an officer of the charity (whether or not the person is a charity trustee of the charity) to be the person responsible for overseeing compliance by the charity with these Regulations;
- (b) ensure that its compliance officer and any other relevant officer receive such AML and ATF training as may be required by the Registrar (in consultation with the NAMLC and the FIA);
- (c) require its officers to disclose any previous convictions for AML or ATF offences;
- (d) report any suspicious transaction relating to money laundering or terrorist financing to the FIA;
- (e) keep a record of all such suspicious transactions;
- (f) conduct ongoing monitoring of its relationships with beneficiaries, donors and partners in accordance with such guidance as may be issued by the Registrar;
- (g) take reasonable measures to establish the identity of donors, beneficiaries and partners, where there is a reasonable risk of money laundering or terrorist financing, in accordance with such guidance as may be issued by the Registrar;

CHARITIES (ANTI-MONEY LAUNDERING, ANTI-TERRORIST FINANCING AND REPORTING) REGULATIONS 2014

- (h) ensure that its payments to beneficiaries and partners are appropriately monitored; and
- (i) establish and maintain its AML and ATF systems and controls.

Due diligence requirements

4 A registered charity shall take measures, where there is a reasonable risk of money laundering or terrorist financing, to confirm and appropriately record information on the identity, credentials and good standing of its beneficiaries, donors, associate charities and partners.

Systems and controls

5 (1) A registered charity shall establish and maintain appropriate and risk-sensitive policies, processes and procedures relating to—

- (a) carrying out of proper due diligence, in accordance with regulation 4, on those individuals and organisations that give money to, receive money from, or work closely with, the charity;
- (b) identifying international transactions and keeping a record and analysis thereof separately from domestic transactions;
- (c) adequate monitoring and verification of end-use of payments to beneficiaries and partners;
- (d) reporting;
- (e) training;
- (f) record-keeping;
- (g) internal control to ensure that all funds are fully accounted for, and are spent in a legitimate manner that is consistent with the purpose and objectives of the charity's stated activities;
- (h) risk assessment and management; and
- (i) the monitoring and management of compliance with and the internal communication of such policies, processes and procedures intended to prevent or detect activities related to money laundering and terrorist financing.

(2) The policies, processes and procedures referred to in paragraph (1) include policies, processes and procedures under which—

- (a) anyone in the charity 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 disclose it to the compliance officer in order 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

CHARITIES (ANTI-MONEY LAUNDERING, ANTI-TERRORIST FINANCING AND REPORTING) REGULATIONS 2014

- (b) where a disclosure is made to the compliance officer, he shall consider it in the light of any relevant information which is available to the charity and determine whether it gives rise to knowledge or suspicion that a person is engaged in money laundering or terrorist financing.
- (3) A charity shall have systems in place enabling it to respond as soon as reasonably practicable to enquiries from the Registrar, the FIA or a police officer regarding—
- (a) whether it maintains, or has maintained during the previous seven years, a donor, beneficiary or partner relationship with any person; and
 - (b) the nature of that relationship.

Record-keeping

- 6 (1) Subject to paragraph (2), a registered charity shall, for a period of at least seven years, maintain records—
- (a) of transactions that are sufficiently detailed—
 - (i) to identify, and separately keep a record of, domestic and international transactions respectively;
 - (ii) to provide an analysis of the international transactions; and
 - (iii) to verify that funds have been spent in a manner consistent with the purpose and objectives of the charity; and
 - (b) of the information obtained pursuant to regulation 4 (due diligence requirements),

and shall, on reasonable request, make such records available to the Registrar, the FIA or a police officer (as the case may be).

(2) But in any case where a police officer has notified a registered charity in writing that particular records are or may be relevant to an investigation which is being carried out, the registered charity shall keep the records beyond the seven-year period pending the outcome of the investigation.

Internal reporting procedures

- 7 A registered charity shall maintain internal reporting procedures which require that—
- (a) the compliance officer is the person to whom a report is to be made of any information or other matter which comes to the attention of another officer of the charity and which in the opinion of that other officer 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 compliance officer in the light of all other relevant information for the purpose of determining whether or not

CHARITIES (ANTI-MONEY LAUNDERING, ANTI-TERRORIST FINANCING AND REPORTING) REGULATIONS 2014

the information or other matter contained in the report does give rise to such a knowledge or suspicion;

- (c) the compliance officer be given access to any other information which may be of assistance to him in considering the report; and
- (d) the compliance officer disclose to the FIA the information or other matter contained in a report, where the compliance officer knows or suspects that a person is engaged in money laundering or terrorist financing.

Training etc.

8 (1) A registered charity shall take appropriate measures to ensure that all its relevant officers are—

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

(2) For the purposes of these Regulations, an officer of a charity is a relevant officer of the charity if, at any time in the course of his duties—

- (a) 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; or
- (b) he plays a role in implementing and monitoring compliance with anti-money laundering or anti-terrorist financing requirements,

and a volunteer is deemed to be a relevant officer of the charity if, at any time in the course of his duties, he has or may have access to any information referred to in subparagraph (a), or plays a role in implementing and monitoring compliance referred to in subparagraph (b).

Annual report

9 (1) An annual report prepared by a registered charity under section 38(1) of the Act shall, in addition to the requirements of that section—

- (a) include the identity of each of its charity trustees and relevant officers for the financial year in respect of which it was prepared, the period of that financial year that he served as such trustee or relevant officer, and his designation;
- (b) include such information on the charity's systems, policies, processes and procedures referred to in regulation 5 as the Registrar may reasonably require to assess the adequacy and effectiveness thereof; and
- (c) include such other information, and be in such form, as the Registrar may reasonably require in accordance with guidance issued by him,

CHARITIES (ANTI-MONEY LAUNDERING, ANTI-TERRORIST FINANCING AND REPORTING) REGULATIONS 2014

and shall be submitted to the Registrar within six months of the end of the financial year to which it relates, unless the six-month period has been extended by the Registrar under section 37(2), as read with section 38(4), of the Act.

(2) Without prejudice to the generality of paragraph (1)(b), the annual report shall include a list and analysis of the charity's international transactions.

Offences

10 (1) A person who fails to comply with any requirement in regulation 3, 4, 5(1) and (3), 6, 7 or 8(1) is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding \$50,000; or
- (b) on conviction on indictment, to a fine not exceeding \$750,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) A person who fails to comply with any requirement in regulation 9 is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding \$5,000; or
- (b) on conviction on indictment, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(3) In deciding whether a person has committed an offence under paragraph (1) or (2), the court shall consider whether he followed any relevant guidance which was at the time issued by the Registrar.

(4) 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.

(5) 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.

Commencement

11 These Regulations shall come into operation on the date that the Act comes into operation.

Made this 17th day of December 2014

Minister of Home Affairs