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GRENADA

STATUTORY RULES AND ORDERS NO. 5 OF 2012

THE MINISTER IN EXERCISE OF THE POWER CONFERRED ON HIM BY SECTION 64 OF THE PROCEEDS OF CRIME ACT, NO. 6 OF 2012 AND WITH THE ADVICE OF THE ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING COMMISSION MAKES THE FOLLOWING REGULATIONS–

(Gazetted 10th February, 2012).

1. Citation. These Regulations may be cited as the

PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND TERRORIST FINANCING) REGULATIONS, 2012.

2. Interpretation. In these Regulations, unless the context otherwise requires–

"applicant for business" means the party proposing to a relevant person in Grenada that they enter into a business relationship or one-off transaction;

"business relationship" means an arrangement between a relevant person and one or more parties, where–

(a) the relevant person has obtained satisfactory evidence of identity of the party who, in relation to the formation of that business relationship, was the applicant for business;

(b) the relevant person engages in business with the other party on a frequent, habitual or regular basis; and

(c) the monetary value of dealings in the course of the arrangement is not known or capable of being known at entry;

"cash" includes coins and any type of bearer negotiable or other monetary instrument and any postal orders;

"CFATF" means the Caribbean Financial Action Task Force of which Grenada is a member;

"Commission" means the Anti-Money Laundering and Combating Terrorism Financing Commission established under section 63 of the Proceeds of Crime Act;

"FATF" means the Financial Action Task Force;

"FIU" means the Financial Intelligence Unit established under the Financial Intelligence Unit Act;

"foreign regulatory authority" means an authority in a jurisdiction outside Grenada which exercises in that jurisdiction supervisory functions that substantially correspond to the supervisory functions of the Commission;

"foreign regulated person" means a person that–

(a) is incorporated, registered, licensed or formed, or if it is not a body corporate, has its principal place of business, in a jurisdiction outside Grenada;

(b) carries on business outside Grenada that, if carried on within Grenada, would fall within a category of business specified in paragraphs (a) to (e) of the definition of "relevant business"; and

(c) in respect of the business referred to in paragraph (b)–

(i) is subject to legal requirements in its jurisdiction for the detection and prevention of money laundering that are consistent with the requirements of the CFATF Recommendations or FATF Recommendations in relation to that business; and

(ii) is properly and adequately supervised for compliance with those legal requirements by a foreign regulatory authority;

"Guidelines" means the Proceeds of Crime (Anti-Money Laundering and Terrorist Financing) Guidelines issued pursuant to section 32 of the Proceeds of Crime Act;

"Money Laundering Reporting Officer" means the person appointed under regulation 13 (1) by a relevant person;

"one-off transaction" means a transaction that constitutes relevant business and which is carried out other than in the course of an established business relationship;

"regulated person" means a person who is licensed or registered to carry on a relevant business in or from within Grenada;

"relevant business" means–

(a) banking business within the meaning of the Banking Act or the Offshore Banking Act;

(b) insurance business within the meaning of the Insurance Act or the International Insurance Act;

(c) the business of company management within the meaning of the Company Management Act, 1996;

(d) business as a mutual fund or providing services as manager or administrator of a mutual fund;

(e) without prejudice to paragraphs (a) and (c), the business of acting as a trust or company service provider for the purpose of providing any of the following services to a third party–

(i) acting as a formation agent of legal persons;

(ii) acting (or arranging for another person to act) as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

(iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, partnership or any other legal person or arrangement;

(iv) acting (or arranging for another person to act) as a trustee of a trust;

(v) acting (or arranging for another person to act) as a nominee shareholder for another person;

(f) the business of providing remittance service of money orders;

(g) the business of providing money transmission services or cheque encashment, whether pursuant to an enactment or otherwise;

(h) the business of–

(i) providing advice on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of undertakings;

(ii) money broking;

(iii) the safe keeping and administration of securities; or

(iv) lending or financial leasing;

(i) the provision of services to clients by attorneys-at-law, firms, notaries public, accountants, accounting firms and auditors which involve transactions concerning any of the following activities–

(i) buying and selling of real estate;

(ii) managing of client money, securities or other assets;

(iii) management of bank, savings or securities accounts;

(iv) organization of contributions for the creation, operation or management of companies;

(v) creation, operation or management of legal persons or arrangements, or buying and selling of business entities;

(j) the business of acting as a real estate agent when engaged in a transaction for a client concerning the buying and selling of real estate;

(k) the business of dealing in jewellery, precious metals or precious stones when such transaction involves accepting a cash payment of fifteen thousand dollars or more or the equivalent in any other currency;

(l) the business of operating a casino (where permitted by law) when a transaction involves accepting a cash payment of three thousand dollars or more or the equivalent in any other currency;

(m) the business of buying and selling cars;

"relevant person" means a person carrying on a relevant business.

(2) Subsection (1)(i) does not apply to attorneys-at-law, notaries public or accountants who are employed by the Government or any statutory body.

(3) For the purposes of subsection (1) (k) and (l), a transaction of or above the threshold designated in that subsection shall be construed to include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

(4) For the purposes of these Regulations–

(a) a business relationship formed by a relevant person is an established business relationship where that person has obtained satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;

(b) the question as to what constitutes satisfactory evidence of identity shall be determined in accordance with the provisions of the Guidelines;

(c) a staff is a key staff if he is an employee of a relevant person who deals with customers or clients and their transactions.

3. (1) **General Requirements.** In conducting relevant business, a relevant person shall not form a business relationship or carry out a one-off transaction with or for another person unless the relevant person–

(a) maintains–

(i) identification procedures in accordance with regulations 4, 5 and 7;

(ii) record keeping procedures in accordance with regulations 8 to 11;

(iii) internal reporting procedures in accordance with regulation 15; and

(iv) internal controls and communication procedures which are appropriate for the purposes of forestalling and preventing money laundering;

(b) takes appropriate measures from time to time for the purpose of making employees aware of–

(i) the procedures maintained under paragraph (a) and any related procedures provided in the Guidelines; and

(ii) the provisions of the Proceeds of Crime Act, the Guidelines, these Regulations and any directive issued pursuant to any enactment; and

(c) provides training for employees to assist them–

(i) 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; and

(ii) in dealing with customers where such transactions may have been reported to the FIU in accordance with the provisions of the Proceeds of Crime Act.

(2) The procedures, measures and training requirements outlined in sub-regulation (1) shall be construed to include any similar or additional procedures, measures and training requirements provided under the Guidelines.

(3) A relevant person shall submit for the approval of the FIU the identification procedures, record keeping procedures, internal reporting procedures and internal controls and communication procedures required to be maintained under sub-regulation (1)(a) and the FIU may keep, for its own use, copies of such documents.

4. Identification procedures in relation to new and continuing business relationships (1) A relevant person shall establish and maintain identification procedures which, as soon as reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction require–

(a) the production by the applicant for business, satisfactory evidence of his identity; or

(b) the taking by the relevant person of such measures as are specified in the identification procedures as will produce satisfactory evidence of the identity of the applicant for business.

(2) The identification procedures established pursuant to sub-regulation (1) shall also–

(a) require that where satisfactory evidence of identity is not obtained by the relevant person, the business relationship or one-off transaction shall not proceed any further until such evidence is obtained, unless and to the extent that the FIU advises otherwise;

(b) require that where the business relationship or one-off transaction subsists, the applicant for business appears to be acting for a third party in respect of that business relationship, the satisfactory evidence of the identity of the third party will be obtained, failing which the business relationship will be terminated;

(c) include the full name (including any other names and aliases) and physical address of the applicant for business and, where he is acting for a third party, the full name (including any other names and aliases) and physical address of the third party;

(d) provide for the assessment by the relevant person of the risk that any business relationship or one-off transaction may involve money laundering and shall be appropriate to the circumstances, having regard to the degree of risk assessed; and

(e) take into account, without limiting paragraph (d), the greater risk of money laundering which arises when the applicant for business is not engaged in a face-to-face relationship or transaction as to be identified.

(3) For the purposes of this regulation, but without prejudice to regulation 2(4)(b), satisfactory evidence of identity is evidence which is reasonably capable of establishing, and to the satisfaction of the person who obtains the evidence, does establish, that the applicant for business is the person he claims to be.

5. Establishing and maintaining verification procedures. (1) A relevant person shall establish and maintain procedures which, in respect of transactions undertaken after a business relationship has been established in compliance with regulation 4, require–

(a) the satisfactory verification of evidence of identity produced pursuant to regulation 4(1)(a), or

(b) the taking of such measures as are specified in the procedures as will produce satisfactory verification of evidence of identity produced under regulation 4(1)(b), as soon as reasonably practicable after transactions are undertaken.

(2) The procedures established pursuant to sub-regulation (1) shall also require that when satisfactory verification of evidence of identity is not obtained or produced, the business relationship and transactions shall not proceed any further.

(3) The provisions of the Guidelines with respect to the verification of evidence of identity shall apply for the purposes of these Regulations.

6. Exceptions to identification procedures. (1) A person carrying on relevant business is not required to obtain evidence of the identity of an applicant for business where he assesses the applicant for business to be of normal or low risk and he has reasonable grounds for believing that the applicant for business is–

(a) a regulated person;

(b) a foreign regulated person; or

(c) an attorney-at-law or an accountant who belongs to a professional body whose rules of conduct or practice embody legal requirements for the detection and prevention of money laundering that are consistent with the requirements of the CFATF Recommendations or FATF Recommendations and the attorney-at-law or accountant is supervised by his professional body for compliance with those requirements.

(2) The exception provided in sub-regulation (1) does not apply where the person handling the transaction on behalf of the person carrying on relevant business to whom the application for business is made knows or suspects that the applicant is engaged in money laundering.

(3) In assessing whether an applicant for business is of normal or low risk for the purposes of sub-regulation (1), the person carrying on relevant business shall have regard to the provisions of the Guidelines.

(4) A person carrying on relevant business is, in relation to a one-off transaction, not required to obtain evidence of the identity of an applicant for business where the amount to be paid by or to the applicant for business is less than ten thousand dollars or the equivalent amount in another currency, unless:

(a) the person carrying on the relevant business has reasonable grounds for believing (whether at the beginning or subsequently), that–

(i) the transaction is linked to one or more other transactions; and

(ii) the total amount to be paid by or to the applicant for business in respect of all the linked transactions is ten thousand dollars or more; or

(b) any person handling the transaction on behalf of the person carrying on relevant business knows or suspects that the transaction involves money laundering.

7. Identification procedures in relation to introduced business. (1) A relevant person that relies on introduction of an applicant for business from a third party (in this regulation referred to as "the introducer") shall establish and maintain identification procedures which, as soon as reasonably practicable after contact is first made between the relevant person and the introducer, require–

(a) the production by the introducer of satisfactory evidence of the identity of the applicant for business; or

(b) the taking of such measures as are specified in the identification procedures as will produce satisfactory evidence of the identity of the applicant for business.

(2) Subject to sub-regulation (5), identification procedures established and maintained pursuant to sub-regulation (1) shall not apply where the relevant person has reasonable grounds for believing that–

(a) the introducer is a person specified in regulation 6(1), or

(a) the relevant person and the applicant for business are bodies corporate in the same group, unless the person handling the transaction on behalf of the person carrying on relevant business knows or suspects that the transaction involves money laundering.

(3) In sub-regulation (2)(b), the term “group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company.

(4) Subject to sub-regulation (5), a written assurance from the introducer that evidence of the identity of the applicant for business:

(a) has been obtained and recorded in accordance with identification procedures maintained by the introducer which comply with these Regulations and the Guidelines or which comply with measures equivalent to these Regulations and the Guidelines, and

(b) will be supplied to the relevant person forthwith upon request, may be accepted by the person carrying on the relevant business concerned as satisfactory evidence of the identity of the applicant for business.

(5) Nothing contained in this regulation limits the duty of the person carrying on relevant business from satisfying himself that, in relation to an applicant for business, the introducer has complied with sub-regulation (4).

8. Establishing and maintaining record of verification of identity. (1) Where a relevant person is required under these Regulations verify the identity of a person, the relevant person shall establish and maintain a record in Grenada which–

(a) indicates the nature of the evidence obtained; and
(b) comprises a copy of the evidence or, where this is not reasonably practicable, contains such information as would enable a copy of the evidence to be obtained.

9. Maintaining record of transactions and reports. (1) Where a relevant person is required under these Regulations to verify the identity of a person, the relevant person shall maintain a record of–

(a) all transactions carried out by or on behalf of that person (such as records sufficient to identify the source and recipient of payments from which investigating authorities will be able to compile an audit trail for suspected money laundering); and

(b) all reports made by it to the FIU and all inquiries relating to money laundering received by it from the FIU.

10. Limitation period for retention of records. (1) A relevant person shall maintain the records required under regulations 7, 8 and 9 for a period of at least five years from the date–

(a) when all transactions relating to a one-off transaction or a series of linked transactions were completed; or

(b) when the business relationship was formally ended.

(2) Where a report has been made to the Anti-money Laundering Reporting Officer appointed under regulation 13 or the relevant person knows or believes that a matter is under investigation, that person shall, without prejudice to sub-regulation (1) or the requirements of the Guidelines relating to the retention of records, retain all relevant records for as long as may be required by the FIU.

(3) For the purposes of this regulation, the question as to what records may be relevant in the investigation process may be determined in accordance with the provisions of the Guidelines.

11. Format and retrieval of records. (1) A relevant person shall ensure that any records required to be maintained pursuant to these Regulations are capable of retrieval without undue delay and in the manner provided in the Guidelines.

(2) A relevant person may rely on the records of a third party in respect of the details of payments and transactions by customers, provided that it is satisfied that the third party is willing and able to retain and, if asked, to produce in the manner provided in the Guidelines, copies of the records required.

12. Maintaining register of money laundering reports and inquiries. (1) A relevant person shall maintain a register of–

(a) all reports made by it to the FIU; and

(b) all inquiries relating to money laundering made of it by the FIU.

(2) The register maintained pursuant to sub-regulation (1) shall be kept separate from other records and shall contain as a minimum–

(a) the date and nature of the report or inquiry;

(b) the name and agency of the inquiring officer;

(c) the powers being exercised and pursuant to what authority; and

(d) details of the accounts or transactions involved.

13. Duty to appoint Money Laundering Reporting Officer. (1) A relevant person shall appoint a Money Laundering Reporting Officer who shall, in addition to the qualifications set out in sub-regulation (5), be of sufficient seniority to perform the functions reposed on a Money Laundering Reporting Officer under the Guidelines and these Regulations.

(2) A person who is appointed as a Money Laundering Reporting Officer shall–

(a) be a natural person; and

(b) have access to all relevant information and material of the relevant person to enable him to perform the functions given to him under the Guidelines and these Regulations.

(3) A relevant person shall, within fourteen days of appointing a Money Laundering Reporting Officer, notify the FIU and the Commission in writing of that fact specifying the date of his appointment, and this requirement shall apply in every new appointment of a Money Laundering Reporting Officer.

(4) The appointment of a Money Laundering Reporting Officer under sub-regulation (1) may relate to an individual who–

(a) is an employee of the relevant person;

(b) is not an employee of the relevant person, but who is resident in Grenada and meets the requirements of this regulation to perform the functions of a Money Laundering Reporting Officer; or

(c) may or may not be an employee of the relevant person, but who meets the requirements of this regulation and is resident in a jurisdiction that is recognized pursuant to the provisions of the Guidelines.

(5) In order to be appointed as a Money Laundering Reporting Officer, a person shall possess the following qualifications–

(a) he must at the minimum hold a diploma with a post qualification experience of not less than three years;

(b) he must be fit and proper;

(c) he must have a broad knowledge of anti-money laundering and terrorist financing matters, including the relevant regional and international treaties (including United Nations Resolutions) relating to the combating of money laundering and terrorist financing;

(d) he must have a good appreciation and understanding of Grenada's laws relating to money laundering and terrorist financing; and

(e) he must possess the ability to make independent and analytical decisions and not be easily susceptible to undue influence.

(6) A Money Laundering Reporting Officer shall be responsible for ensuring compliance by staff of the relevant person with–

(a) the provisions of these Regulations, Proceeds of Crime Act, the Terrorism Act, the Guidelines and any other enactment relating to money laundering and terrorist financing;

(b) the provisions of any internal reporting and manual of compliance procedures relating to money laundering and terrorist financing; and

(c) any additional reporting and related obligations provided in the Guidelines.

(7) The Money Laundering Reporting Officer shall, in addition to the functions reposed in him by these Regulations and the Guidelines, act as the liaison between the relevant person and the FIU in matters relating to compliance with the provisions of these Regulations, the Proceeds of Crime Act, the Terrorism Act, the Guidelines and any other enactment relating to money laundering and terrorist financing.

14. Due diligence audit. (1) Without prejudice to regulation 13 or any other enactment relating to the conduct of inspections to verify compliance, the FIU or a person designated by the FIU in writing may conduct an inspection of a relevant person to determine compliance by that person with the requirements of these Regulations, Proceeds of Crime Act, the Terrorism Act, the Guidelines and any other enactment or directive relating to money laundering.

(2) The FIU may, for purposes of these Regulations and the Guidelines, issue such directives as it considers necessary and the directives, when issued, shall, unless considered by the FIU to be of a restricted and confidential nature, be published in the *Gazette*.

15. Establishment of procedures in relation to suspicious transactions. (1) A relevant person shall establish written internal reporting procedures which, in relation to its relevant business, will–

(a) enable its directors, or as the case may be, partners, all other persons involved in its management, and all key staff, to know to whom they should report knowledge or suspicion of money laundering;

(b) ensure that there is a clear reporting chain under which suspicions of money laundering will be passed to the Money Laundering Reporting Officer;

(c) ensure that the Money Laundering Reporting Officer has reasonable access to all relevant information which may be of assistance to him and which is available to the relevant person; and

(d) ensure full compliance with the requirements of the Guidelines.

16. Staff training. (1) A relevant person shall provide education and training for all of its directors or, as the case may be, partners, all other persons involved in its management, and all key staff, to ensure that they are aware of–

(a) the provisions of these Regulations, Proceeds of Crime Act, the Terrorism Act, the Guidelines and any other enactment relating to money laundering and terrorist financing;

(b) the relevant regional and international conventions, United Nations Security Council Resolutions and standards of compliance established from time to time by the CFATF, FATF and other organizations of which Grenada is a member or in which Grenada holds associate or observer status, relating to money laundering and terrorist financing;

(c) their personal and the relevant person's obligations under the enactments and instruments referred to in paragraphs (a) and (b);

(d) the manual of compliance procedures or internal control systems and other requirements established pursuant to these Regulations and the Guidelines;

(e) their personal liability for failure to report information or suspicions in accordance with the requirements of these Regulations, the Guidelines and any other enactment, including any established internal procedures.

(2) A relevant person shall, in addition, provide training–

(a) to all of the persons referred to in sub-regulation (1) with respect to–

(i) ensuring compliance with regulation 3 (1) (c);

(ii) its policies and procedures to detect and prevent money laundering and terrorist financing; and

(iii) its customer identification, record keeping and other procedures; and

(b) in accordance with the requirements of this regulation and the Guidelines to all new key staff as soon as practicable after their appointment.

(3) A relevant person shall provide the training requirements referred to in sub-regulations (1) and (2) on such frequent basis as it may determine, but in any case at least once every year.

17. Offences and penalties. (1) A person who fails to comply with the requirements of these Regulations or any directive issued pursuant to regulation 14(2), commits an offence.

(2) A person who commits an offence under sub-regulation (1) is liable–

(a) on summary conviction, to a fine of ten thousand dollars; and

(b) on conviction on indictment, to a fine of fifteen thousand dollars.

(3) In proceedings against a person for an offence under these Regulations, it shall be a defence for the person to prove that he took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations or any directive issued pursuant to regulation 14 (2) in respect of which he is charged.

(4) Where an offence under these Regulations has been committed by a body corporate, its officers and directors shall be liable.

(5) Where the affairs of a body corporate are managed by its members, sub-regulation (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) Where an offence under these Regulations is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been

committed with the consent or connivance of, or is attributable to the failure to exercise due diligence by, a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he, as well as the partnership or association, commit that offence and is liable to be proceeded against and punished accordingly.

Made by the Minister this 8th day of February, 2012.

V. NAZIM BURKE
Minister responsible for Finance.

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