

This is an unofficial consolidation of the following legislation and is not intended to replace the official version contained in the Laws of the Virgin Islands to which readers are referred.

VIRGIN ISLANDS

ANTI-MONEY LAUNDERING CODE OF PRACTICE, 1999

**(As amended by Statutory Instruments 2000 No. 37; 2001 No. 32;
and the Financial Services Commission Act, 2001)**

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 1999 NO. 48

PROCEEDS OF CRIMINAL CONDUCT ACT (No. 5 of 1997)

Anti-money Laundering Code of Practice, 1999 (As amended by Statutory Instruments 2000 No. 37; 2001 No. 32; and the Financial Services Commission Act, 2001)

[Gazetted 14th October, 1999]

The Governor in Council, in exercise of the powers conferred by section 27 (1) of the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997), issues the following Code:

Citation and
commencement

1. This Code of Practice may be cited as the Anti-money Laundering Code of Practice, 1999 and shall come into force on such date as the Governor-in-Council may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. (1) In this Code, unless the context otherwise requires,

“applicant for business” means a person seeking to form a business relationship or carry out a one-off transaction with a relevant person who is carrying on relevant business in or from the Territory;

“Attorney-at-Law” means a barrister-at-law or solicitor admitted or entitled to practice in the Territory in accordance with the Eastern Caribbean Supreme Court (Virgin Islands) Ordinance;

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“business relationship” means an arrangement between two or more persons where

(a) at least one of those persons is acting in the course of a business;

(b) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and

(c) the total amount of any payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

“CFATF” means the Caribbean Financial Action Task Force on money laundering;

“FATF” means the Financial Action Task Force on money laundering;

“Guidance Notes” means the Guidance Notes on the Prevention of Money Laundering issued by the Joint Anti-money Laundering Co-ordinating Committee;

“one-off transaction” means the transaction other than a transaction carried out in the course of an established business relationship formed by a relevant person;

“regulated person” means any person carrying on

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| No. 9 of 1990 | (a) a banking business or trust business within the meaning of the Banks and Trust Companies Act, 1990; |
| No. 15 of 1994 | (b) insurance business within the meaning of the Insurance Act, 1994; |
| No. 8 of 1990 | (c) the business of company management within the meaning of the Company Management Act, 1990; |
| No. 6 of 1996 | (d) business as a mutual fund or providing services as manager or administrator of a mutual fund within the meaning of the Mutual Funds Act, 1996; |

S.I. No. 14 of 1934

- (e) (deleted)
- (f) (deleted)
- (g) any activity involving the remittance of Telegraph Money Order under the Post Office (Telegraph Money Order) Rules, 1934;
- (h) any activity involving money transmission services or cheque encashment facilities;
- (i) any activity in which money belonging to a client is held or managed by
 - (i) an Attorney-at-Law;
 - (ii) an accountant or a person who, in the course of business, provides accountancy services;
- (j) the business of acting as company secretary of bodies corporate;

“relevant business” means engaging by way of business in one or more of the businesses or transactions referred to in relation to a regulated person;

“relevant person” means a person carrying on relevant business;

“Reporting Authority” means the Reporting Authority established under the Reporting Authority (Constitution and Procedure) Order, 1998 pursuant to section 27 (2) of the Act;

S.I. No. 11 of 1998

- (2) For the purposes of this Code,
 - (a) a business relationship formed by any relevant person is an established business relationship where that person has obtained, under procedures maintained in accordance with this Code, 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 may be determined in accordance with the Guidance Notes; and
- (c) a staff is a key staff if, at any time in the course of his duties, he has, or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering.

General requirements.

3. (1) 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 paragraphs 4 to 6;
 - (ii) record keeping procedures in accordance with paragraphs 7 to 11;
 - (iii) internal reporting procedures in accordance with paragraph 14; 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 sub-sub-paragraph (a); and
 - (ii) the provisions of the Act, any Regulations made thereunder, this

Code and any directives issued under this Code; 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;
 - (ii) in dealing with customers where such transactions have been reported to the Reporting Authority in accordance with the provisions of the Act.

(2) For the avoidance of doubt, it is declared that the requirements of sub-paragraph (1) (a) shall apply in relation to a person with whom, prior to the coming into force of this Code, a business relationship or one-off transaction was formed or carried out and such relationship or transaction is subsisting or continues upon the coming into force of this Code, and in such a case the reference in paragraphs 4, 5 and 6 as to the period when contact is first made shall be construed as if contact was first made upon the coming into force of this Code.

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

Identification procedures in relation to new and continuing business relationships

4. (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, require

- (a) the production by the applicant for business of satisfactory evidence of his identity; or
- (b) the taking of such measures as are specified

in the procedures as will produce satisfactory evidence of his identity.

(2) Sub-paragraph (1) shall not apply if there are reasonable grounds for believing that the applicant for business is

- (a) a regulated person; or
- (b) an authorised financial institution in a country or territory which is a member of the FATF or CFATF and which has anti-money laundering laws and procedures that are at least equivalent to those of the Territory; or
- (c) an Attorney-at-Law or an accountant, where the relevant person is satisfied that the rules of the applicant's professional body embody requirements equivalent to this Code.

(3) Sub-paragraph (1) shall not apply if there are reasonable grounds for believing that the applicant for business

- (a) acts in the course of a business in relation to which a regulatory authority outside the Territory exercises regulatory functions; and
- (b) is based or incorporated in or formed under the law of a country or territory outside the Territory which is a member of the FATF or CFATF and in which there are in force anti-money laundering laws and procedures that are at least equivalent to those of the Territory.

(4) For the purposes of sub-paragraphs (2) (b) and (3) (b), a country or territory outside the Territory shall be deemed to have in force anti-money laundering laws and procedures that are at least equivalent to those of the Territory if it is so recognised by the Joint Anti-Money Laundering Co-ordinating Committee referred to in the Guidance Notes.

(5) A relevant person shall establish and maintain procedures which, in respect of transactions undertaken after a

business relationship has been established in compliance with sub-paragraph (1), require

- (a) the satisfactory verification of evidence of identity produced under sub-paragraph (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 sub-paragraph (1)(b),

as soon as reasonably practicable after transactions are undertaken which are significantly different from the normal pattern of previous business.

(6) Procedures comply with this paragraph if they require that when satisfactory evidence of identity or satisfactory verification of evidence of identity is not obtained or produced, the business relationship and transactions shall not proceed any further.

Identification procedures in relation to one-off transactions.

5. (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 one-off transaction, require

- (a) the production by the applicant of satisfactory evidence of his identity; or
- (b) the taking of such measures as are specified in the procedures as will produce satisfactory evidence of his identity.

(2) Sub-paragraph (1) shall not apply if there are reasonable grounds for believing that the applicant for business is a person specified in paragraph 4 (2) or (3), and paragraph 4 (4) shall apply accordingly.

(3) Procedures comply with this paragraph if they require that when satisfactory evidence of identity is not obtained or produced, the business relationship and transaction shall not proceed any further.

Identification procedures relevant in relation to introduced persons.

6. (1) Where an applicant for business is introduced to a person by a third party (in this paragraph referred to as “the introducer”) the relevant person 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; or
- (b) the taking of such measures as are specified in the procedures as will produce satisfactory evidence of the identity of the applicant.

(2) Sub-paragraph (1) shall not apply if there are reasonable grounds for believing that

- (a) the introducer is a person specified in paragraph 4 (2); or
- (b) the relevant person and the applicant for business are bodies corporate in the same group.

(3) In sub-paragraph (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, and “subsidiary” and “holding company” shall be construed in accordance with section 2 (2) to (6) of the Banks and Trust Companies Act.

No. 9 of 1990

(4) Sub-paragraph (1) shall not apply if there are reasonable grounds for believing that

- (a) the introducer acts in the course of a business in relation to which a regulatory authority outside the Territory exercises regulatory functions; and

- (b) the introducer is based or incorporated in or formed under the law of a country or territory outside the Territory which is a member of the FATF or CFATF and in which there are in force anti-money laundering laws and procedures that are at least equivalent to those of the Territory; and
- (c) the introducer will comply with terms of business made in accordance with sub-paragraph (6).

(5) Paragraph 4 (4) applies to sub-paragraph (4) (b) as if the reference to sub-paragraphs (2) (b) and (3) (b) in paragraph 4 (4) were a reference to sub-paragraph (4) (b).

(6) Written terms of business between the relevant person and the introducer shall, notwithstanding sub-paragraph (2), in all cases require the introducer

- (a) to verify the identity of all applicants for business introduced to the relevant person sufficiently to comply with the requirements of the Act, any Regulations made thereunder and this Code;
- (b) to maintain a record of the evidence of verification of identity and records of all transactions for at least five years calculated in accordance with paragraph 9 (1);
- (c) to supply to the relevant person forthwith upon request evidence of the verification of identity in any particular case; and
- (d) to inform the relevant person specifically of each case where the introducer is not required or has been unable to verify the identity of the applicant.

(7) Procedures comply with this paragraph if they require that when satisfactory evidence of identity is not obtained or produced, the business relationship and transactions shall not

proceed any further.

Maintaining a record of verification of identity.

7. Where a relevant person is required under this Code to verify the identity of a person, the relevant person shall establish and maintain a record in the Territory 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.

Maintaining a record of transactions.

8. Where a relevant person is required under this Code to verify the identity of a person, the relevant person shall maintain a record of 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).

Limitation period for retention of records.

9. (1) A relevant person shall maintain the records required by paragraphs 6, 7 and 8 for at least five years from the date

- (a) when all activities relating to a one-off transaction or a series of linked transactions were completed;
- (b) when the business relationship was formally ended; or
- (c) where the business relationship was not formally ended, when the last transaction was carried out.

(2) Where a report has been made to the Reporting Authority in pursuance of paragraph 14 (1) (f), or the relevant person knows or believes that a matter is under investigation, that person shall, without prejudice to sub-paragraph (1), retain all relevant records for as long as may be required by the Reporting Authority.

(3) For the purposes of this paragraph, the question as to what records may be relevant in the investigation process may

be determined in accordance with the Guidance Notes.

Format and retrieval of records.

10. (1) A relevant person shall ensure that any records required to be maintained under this Code are capable of retrieval in legible form without undue delay.

(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 legible form, copies of the records required.

Maintaining a register of money laundering enquiries.

11. (1) A relevant person shall maintain a register of all enquiries made of it by the Reporting Authority and other law enforcement authorities acting under powers provided by the Act, any regulations made thereunder and this Code.

(2) The register maintained under sub-paragraph (1) shall be kept separate from other records and shall contain as a minimum the date and nature of the enquiry, the name and agency of the inquiring officer, the powers being exercised, and details of the accounts or transactions involved.

Duty to appoint Compliance Officer

12. (1) A relevant person shall appoint or designate one of his staff, as may be approved by the Financial Services Commission, as a Compliance Officer for the purposes of this Code.

(2) A Compliance Officer shall

(a) be a senior officer with relevant qualifications and experience to enable him to respond sufficiently well to enquiries relating to the relevant person and the conduct of its business;

(b) be responsible for establishing and maintaining such manual of compliance procedures in relation to the business of the relevant person as the Financial Services Commission may require;

(c) be responsible for ensuring compliance by staff of the relevant person with

- (i) the provisions of this Code and any other law relating to money laundering;
 - (ii) the provisions of any manual of compliance procedures established under sub-sub-paragraph (b); and
 - (iii) the internal reporting procedures established under paragraph 14;
- (d) act as the liaison between the relevant person and the Financial Services Commission in matters relating to compliance with the provisions of this Code and any other law or directive with respect to money laundering; and
- (e) prepare and submit to the Financial Services Commission written reports on the relevant person's compliance with the provisions of this Code and any other law or directive relating to money laundering, and the reports shall be prepared in such form and submitted at such time as the Financial Services Commission may determine.

(3) (Deleted)

Due diligence audit.

13. (1) Without prejudice to paragraph 12 or any enactment relating to the conduct of inspections to verify compliance, the Financial Services Commission or a person designated by it in writing may conduct an inspection of any relevant person to determine compliance by that person with the requirements of this Code and any other law or directive relating to money laundering.

(2) The Financial Services Commission may, for the purposes of this Code, issue such directives as it considers necessary and such directives, when issued, shall be published in the *Gazette*.

Establishment of

14. (1) A relevant person shall establish written internal

procedures for recognising and reporting suspicious transactions.

reporting procedures which, in relation to its relevant business, will

- (a) enable all 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 any knowledge or suspicion of money laundering activity;
- (b) ensure that there is a clear reporting chain under which suspicions of money laundering activity will be passed to the appropriate person (in this paragraph referred to as “the Reporting Officer”);
- (c) identify a Reporting Officer to whom a report is to be made of any information or other matter which comes to the attention of the person handling that business and which in that person’s opinion gives rise to a knowledge or suspicion that another person is engaged in money laundering;
- (d) require the Reporting Officer to consider any report in the light of all other relevant information available to him for the purpose of determining whether or not it gives rise to a knowledge or suspicion of money laundering;
- (e) ensure that the Reporting Officer has reasonable access to any other information which may be of assistance to him and which is available to the relevant person; and
- (f) require that the information or other matter contained in a report is disclosed promptly to the Reporting Authority where the Reporting Officer knows or suspects that another person is engaged in money laundering.

(2) A relevant person shall maintain a register of all reports made to the Reporting Authority in pursuance of sub-

paragraph (1) (f).

(3) The register maintained under sub-paragraph (2) shall contain details of the date on which the report is made, the person who makes the report and information sufficient to identify the relevant papers.

(4) The person required to be identified as a Reporting Officer under sub-paragraph (1) (c) may be the same person as the Compliance Officer appointed or designated under paragraph 12 (1) and any person so identified under this sub-paragraph shall perform the functions of a Reporting Officer and a Compliance Officer.

Staff training.

15. (1) A relevant person shall provide education and training for all 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 the Act, any Regulations made thereunder and this Code;
- (b) their personal obligations under those enactments;
- (c) the manual of compliance procedures established under paragraph 12 (2) (b) and the internal reporting procedures established under paragraph 14;
- (d) the procedures maintained by the relevant person in compliance with the duties imposed under this Code; and
- (e) their personal liability for failure to report information or suspicions in accordance with internal procedures.

(2) A relevant person shall, in addition, provide training in accordance with the requirements of this paragraph to all new key staff as soon as practicable after their appointment.

Training for senior and specialist staff.

16. A relevant person shall also provide education and training appropriate to particular categories of staff in

- (a) its policies and procedures to prevent money laundering;
- (b) its customer identification, record-keeping and other procedures; and
- (c) the recognition and handling of suspicious transactions.

Requirement for refresher training.

17. A relevant person shall, at least once in every year, make arrangements for refresher training to remind key staff of their responsibilities and to make them aware of any changes in the laws relating to money laundering and the internal procedures of the relevant person.

Offences and penalties.

18. (1) A person who fails to comply with the requirements of this Code or any directive issued under paragraph 13 (2) commits an offence and is liable on

- (a) summary conviction to a fine not exceeding five thousand dollars;
- (b) conviction on indictment
 - (i) for a first offence, to a fine not exceeding ten thousand dollars; and
 - (ii) for a second or subsequent offence, to a fine not exceeding fifteen thousand dollars.

(2) In determining whether a person has complied with the requirements of this Code or any directive issued under paragraph 13 (2), a court may take account

- (a) of any provision in the Guidance Notes which may apply to that person;
- (b) in a case where sub-sub-paragraph (a) does not apply, of any other relevant guidance issued by a body that regulates, or is representative of, any trade, business, profession or employment carried on by that

person.

(3) In proceedings against a person for an offence under this Code, 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 this Code or any directive issued under paragraph 13 (2) in respect of which he is charged.

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(4) Where an offence under this Code has been committed by a body corporate, section 22 (2) of the Interpretation Act shall apply, except that the words “the liability of whose members is limited” shall be omitted.

(5) Where the affairs of a body corporate are managed by its members, sub-paragraph (4) 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 this Code 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, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Use of Guidance Notes.

19. In the preparation of procedures required to be maintained accordance with the provisions of this Code, a relevant person may in adopt or have regard to the provisions of the Guidance Notes.

Director* may issue
Guidelines

20. (1) The Director of Financial Services* may issue Guidelines concerning the standards of compliance expected of relevant persons.

(2) Without limiting subparagraph (1), the Guidelines issued by the Director* may include

- (a) the factors that he will take into account in considering the suitability of a person as a compliance officer;

- (b) the functions and responsibilities of a compliance officer; and
- (c) the matters to be included in a compliance manual prepared under this Code.

Qualifying relevant persons

21. (1) For the purposes of this paragraph, the following are qualifying relevant persons:

- (a) an individual carrying on relevant business as a sole trader who does not employ any staff;
- (b) a company that does not employ any staff in the Virgin Islands and whose relevant business is managed by another relevant person in the Virgin Islands, whether solely or in conjunction with persons outside the Virgin Islands;

Act No. 6 of 1996

- (c) a fund registered under Part II of the Mutual Funds Act, 1996;
- (c) a fund recognized under Part III of the Mutual Funds Act, 1996 and
- (e) a manager or administrator licensed under Part IV of the Mutual Funds Act, 1996;

(2) For the purpose of subparagraph (1)(b), the relevant business of the following is deemed to be managed by another relevant person in the Virgin Islands:

- (a) a company holding a restricted trust licence issued under the Banks and Trust Companies Act, 1990;

Act No. 9 of 1990

- (b) a company holding a general trust licence issued under the Banks and Trust Companies Act, 1990 that does not have a physical presence in the Virgin Islands; and

- (c) a company holding a licence issued under the Insurance Act, 1994 that does not carry on domestic business within the meaning of section 31 of that Act.

(3) The Director of Financial Services* may, by publication in the Gazette, exempt qualifying relevant persons from provisions of this Code or modify the application of this Code to them.

(4) A notice issued under sub-paragraph (1) may make different provision in relation to persons, cases or circumstances of different descriptions.

*** References to “Director” and “Director of Financial Services” here erroneously remain unchanged by Schedule 5 of the Financial Services Commission Act.**