

2001

**MONEY LAUNDERING
(PREVENTION) REGULATIONS**

S.R.O.

COMMONWEALTH OF DOMINICA

REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Short Title.
2. Interpretation.
3. Systems and training to prevent money laundering.
4. Offences by bodies corporate, partnerships and unincorporated associations.
5. Identification procedures, business relationships and transactions.
6. Identification procedures payment by post, or electronically
7. Identification procedures, transactions on behalf of another.
8. Identification procedures exemptions.
9. Record-keeping procedures.
10. Internal reporting procedures.
11. Reporting of evidence of money laundering.
12. Use of disclosed information.
13. Exoneration from the duty of professional secrecy.
14. Format and retrieval of records.
15. Maintaining a register of money laundering enforcement enquiries.
16. Duty to appoint compliance officer.
17. Staff training.
18. Requirement for refresher training.
19. Use of Guidance Notes.
20. Suspicious transaction reporting forms.
21. Transitional provisions.

Schedule

2001

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COMMONWEALTH OF DOMINICA

Statutory Rules and Orders No. OF 2001

REGULATIONS

MADE by the Minister under section 33 of the Money Laundering (Prevention) Act (No 20 of 2000)

(Gazetted , 2001.)

1. These regulations may be cited as the-

Short Title.

**MONEY LAUNDERING (PREVENTION)
REGULATIONS, 2001.**

2. (1) In these Regulations -

Interpretation.

“the Act” means the Money Laundering (Prevention) Act, 2000;

“applicant for business” means a person, whether acting as principal or agent, who seeks to form a business relationship, or carry out a transaction with a person who is acting in the course of relevant business;

“Authority” means the Money Laundering Supervisory Authority established under Section 9 of the Act;

“business relationship” means any arrangement between two or more persons, at least one of whom is acting in the course of relevant business, where -

- (a) the purpose or effect of the arrangement is to facilitate a frequent or habitual course of dealings between the persons concerned; and

(b) 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;

“Case 1” (negotiations) means any case where negotiations take place between the parties with a view to the formation of a business relationship between them;

“Case 2” (suspicion) means any case where, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering;

“Case 3” (single large transaction) means any case where, in respect of any transaction, payment is to be made by or to the applicant for business of the amount of Five thousand United States dollars (US\$5,000) or the equivalent in any other currency or more;

“Case 4” (large series of transactions) means any case where, in respect of two or more transactions it appears to a person dealing with any of the transactions that -

(a) the transactions are carried out by the same person and are of a similar character; and

(b) the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is Five thousand United States dollars (US\$5,000) or the equivalent in any other currency or more;

“established business relationship” means a business relationship formed by a person acting in the course of relevant financial business where that person has obtained, under procedures maintained by him in accordance with the provisions of regulation 5, satisfactory evidence of the identity of the persons who, in relation to the formation of that business relationship, was the applicant for business;

“money laundering” has the same meaning assigned to it in the Act;

“relevant business” means -

- (a) any business of banking carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Banking Act, 1991 or the Offshore Banking Act, 1996;
- (b) trust business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Offshore Banking Act, 1996 or the International Exempt Trust Act, 1997;
- (c) insurance business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Insurance Act, 1974 or the Exempt Insurance Act, 1997;
- (d) investment business carried on by a person or institution licensed, or required to be licensed, under the provisions of any law in force in Dominica;

- (e) any activity carried on by a person pursuant to any law authorizing the business of property business, credit union and building societies;
- (f) any activity carried on by a person pursuant to any law in relation to money broking, money lending and pawning;
- (g) the business of company management within the meaning of the Exempt Insurance Act, 1997;
- (h) any activity involving money transmission services;
- (i) the business of a mutual fund or providing services as manager or administrator of a mutual fund;
- (j) the business of car dealerships;
- (k) the business of casinos (gaming houses), Internet gaming and wagering services;
- (l) the business of courier services or jewelry business;
- (m) the business of securities dealing and brokering;
- (n) the business of nominee services;
- (o) the business of registered agent;
- (p) the business of asset management and advice-custodial services;
- (r) any activity which is associated with a business falling within paragraphs (a) to (q) above.

“transaction” means any transaction (including the opening of an account and a safe deposit facility) other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant business.

3. (1) In conducting relevant business, a person shall not form a business relationship or carry out any transaction with or for another person unless the person carrying on the relevant business

Systems and training to prevent money laundering.

(a) maintains the following procedures established in relation to that business:

- (i) identification procedures in accordance with the provisions of regulations 5 and 7;
- (ii) record-keeping procedures in accordance with the provisions of regulation 9;
- (iii) internal reporting procedures in accordance with the provisions of regulation 10; 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 under the provision of paragraph (a) and any other relevant policies that are maintained by him;
- (ii) the provisions of enactments relating to money laundering; and
- (iii) Guidance Notes issued by the Authority; and

(c) provides employees from time to time with training:

- (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 have been reported to the Authority in accordance with the provisions of the Act.

(2) Any person who contravenes the provisions of this regulation commits an offence and shall, on conviction, be liable to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding two years.

(3) In determining whether a person has complied with any of the requirements of subregulation (1) -

- (a) a court shall take into account any relevant guidance notes issued, approved or adopted by the Authority, which applies to that person; and
- (b) a court may take into account in a case where no guidance falling within the provisions of paragraph (a) applies, any other relevant guidance issued by a body which regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(4) In proceedings against any person for an offence against this regulation, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(5) In this regulation, the term “employees” means employees whose duties include the handling of relevant business.

4. (1) Where an offence under regulation 3 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by bodies corporate, partnerships and unincorporated associations.

(2) Where the affairs of a body corporate are managed by the members, sub-regulation (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.

(3) Where an offence under regulation 3 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 any neglect on the part of, a partner in the partnership or 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 shall be liable to be proceeded against and punished accordingly.

5. (1) Subject to the provisions of regulations 6 and 8, identification procedures maintained by a person carrying on a relevant business shall be deemed to be in accordance with the provisions of this regulation if, in Cases 1 to 4 they require as soon as it is reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or transaction -

Identification procedures, business relationships and transactions.

- (a) the production by the applicant for business of satisfactory evidence of his identity; or
- (b) the taking of measures specified in the procedures as will produce evidence of identity and where that evidence is not obtained, the procedures shall require that the business in question shall not proceed.

(2) Notwithstanding subregulation (1)(b) where to refrain from proceeding with a transaction is likely to frustrate efforts of investigating a suspected money laundering operation, that transaction shall proceed only on the direction of the Authority.

(3) The procedures referred to in sub-regulation (1) are in accordance with this regulation if, when a report is made in circumstances falling within Case 2 whether in accordance with regulation 10 or directly to the Authority as required in regulation 11, they provide for steps to be taken in relation to the transaction in question in accordance with any directions that may be given by the Authority.

(4) For the purposes of these regulations, evidence of identity shall be deemed to be satisfactory if -

- (a) it is reasonably capable of establishing that the applicant is the person he claims to be; and
- (b) the person who obtains the evidence is satisfied, in accordance with the established internal procedures and policies of the business concerned, that it does establish that fact.

(5) In determining for the purposes of these regulations what is reasonably practicable in relation to any particular business relationship or transaction, all the circumstances shall be taken into account including, in particular -

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- (a) the nature of the business relationship or transaction concerned;
 - (b) the geographical locations of the parties;
 - (c) whether it is possible to obtain the evidence before commitments are entered into between the parties or before money is exchanged; and
 - (d) in relation to Case 3 (single large transaction) or Case 4 (large series of transactions), the earliest stage at which there are reasonable grounds for presuming that the total amount payable by an applicant for business is Five thousand United States dollars (US\$5,000) or equivalent in any other currency or more.

6. (1) Where an applicant would, apart from this subregulation, be required under identification in accordance with the provisions of regulation 5, to produce evidence of his identity, but -

Identification
procedures
payment by post,
or electronically.

- (a) the circumstances are such that a payment is to be made by the applicant for business; and
- (b) it is reasonable in all circumstances:
 - (i) for the payment to be sent by post, by hand or by any electronic means which is effective to transfer funds; or
 - (ii) for the details of the payment to be sent by post or delivered by hand or to be given by any other electronic means;

then, subject to the provisions of subregulation (3), the fact that the payment is debited from an account held in the applicant's name at a bank domiciled in Dominica shall be capable of constituting the required evidence of identity.

(2) For the purposes of paragraph (b) of subregulation (1), it shall be immaterial whether the payment or its details are sent or given to a person who is bound

by the provisions of sub-regulation (1) of regulation 5 or to some other person acting on his behalf.

(3) The provisions of sub-regulation (1) shall not have effect to the extent that:

- (a) Case 2 (suspicion) applies to the circumstances of the payment; or
- (b) the payment is made by a person in the course of opening an account with any financial institution.

Identification procedures, transactions on behalf of another.

7. (1) Subject to the exemptions provided in regulation 10, the provisions of this regulation apply in relation to a person who is bound by the provisions of sub-regulation(1) of regulation 3 where an applicant for business is or appears to be acting otherwise than as principal.

(2) In all identification procedures maintained by a person it shall be deemed to be in accordance with this regulation if, in a case to which the provisions of subregulation (1) apply-

- (a) they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting in addition to identification of the applicant for business; and
- (b) they require that, where such measures cannot be taken, the business relationship or transaction shall only proceed as provided for under subregulation (1) of regulation 5.

(3) In determining, for the purposes of subregulation (2), what constitutes measures in any particular case, regard shall be had to best practice which, for the time being, is followed in the relevant field of business and is applicable to the circumstances of the case.

(4) For the purposes of subregulation (2), it shall be reasonable for a person carrying on a relevant business bound by the provisions of subregulation (1) of regulation 3, to obtain from the applicant for business a written declaration in which he discloses satisfactory identification of his principal:

Provided that -

- (i) where the principal is a body corporate, satisfactory identification shall also be disclosed of all directors of the principal; and
- (ii) the applicant for business is duly authorized in writing by the principal;
- (iii) this paragraph shall not apply where the applicant for business is a person acting within the terms of subregulation (5).

(5) All financial institutions in Dominica must establish the true identity of each account holder. In the case of an account held by a business, trust, fiduciary agent, nominee company or professional intermediary, such as an attorney, chartered accountant, certified public accountant or auditor, the financial institution must have or obtain sufficient evidence as to the true identity of the beneficial interests in the account. In addition the nature of the business and the source of the funds of the account holder and beneficiaries must be verified.

(6) An applicant for business who makes a false declaration for the purposes of this regulation commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand dollars

8. (1) Subject to the provisions of sub-regulation (2), identification procedures under the provisions of regulations 5 and 7 shall not require any steps to be taken to obtain evidence of any person's identity -

- (a) where there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions of subregulation (1) of regulation 3;

Identification
procedures
exemptions.

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- (b) in relation to life insurance business in respect of which a premium is payable in one installment of an amount not exceeding one thousand and eighty-five dollars; or
 - (c) in relation to life insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed five hundred and forty-five dollars.

(2) Nothing in this regulation shall apply in circumstances falling within Case 2 (suspicion).

Record-keeping procedures.

9. (1) Record-Keeping procedures maintained by a person carrying on a relevant business shall be deemed to be in accordance with the provisions of this regulation if they make provision for the keeping, for the prescribed period, of the following records -

- (a) in any case where evidence of a person's identity is obtained under procedures maintained in accordance with the provisions of regulations 5 or 7, a record that indicates the nature of the evidence; and
 - (i) comprises a copy of the evidence of identity; and
 - (ii) provides such information authenticated by the applicant for business as would enable a copy of the evidence of identity to be obtained; or
 - (iii) in a case where it is not reasonably practicable to comply with items (i) or (ii) of this paragraph, provide sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and

(b) a record containing details relating to all business transacted (including any business transacted in the course of a business relationship).

(2) For the purposes of sub-regulation (1) the prescribed period shall be the period of at least seven years commencing with

(a) in relation to such records as are described in paragraph (a), the date on which the relevant business was completed; and

(b) in relation to such records as are described in paragraph (b), the date on which all dealings taking place in the course of the business in question were completed.

(3) For the purposes of paragraph (a) of sub-regulation (2) the date on which relevant business is completed shall, as the case may be, be deemed to be the date of -

(a) in circumstances falling within Case 1 (negotiations), the ending of the business relationship in respect of whose formation the record under this regulation was completed;

(b) in circumstances falling within Case 2 (suspicion) or Case 3 (single large transaction), the carrying out of the transaction in respect of which the record under this regulation was compiled; and

(c) in circumstances falling within Case 4 (large series of transactions), the carrying out of the last transaction in respect of which the record under this regulation was compiled;

and where the formalities necessary to end a business relationship have not been observed, but a period of six years has elapsed since the date of the last transaction in the course of that relationship, then the date of that transaction shall be treated as the date on which the relevant business was completed.

Internal reporting
procedures.

10. (1) A relevant business shall establish and maintain written internal 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 the management, 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 Compliance Officer;
- (c) identify a Compliance 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 Compliance Officer to consider any report in 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 Compliance Officer has reasonable access to any other information which is available to the relevant person; and

(f) require that the information or other matters contained in a report is disclosed within five days to the Authority where the compliance officer knows or suspects that another person is engaged in money laundering.

(2) A person carrying on a relevant business shall maintain a register of all reports made to the Authority in pursuance of sub-regulation (1) (i).

(3) The register maintained under sub-regulation (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 failure of the Compliance Officer of a relevant business to maintain such procedures in accordance with the provisions of this regulation shall not constitute an offence but will be subject to a penalty of fifty thousand dollars.

11. Where the compliance officer of a relevant business or any person subject to the provisions of regulation 3(1) -

Reporting of evidence of money laundering.

(a) obtains any information; and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering;

that Compliance Officer or the person subject to the provisions of regulation 3 (1) shall, as soon as is reasonably practicable, disclose that information to the Authority.

12. Any information disclosed under these regulations shall be used only in connection with the investigation of money laundering activities.

Use of disclosed information.

13. Any *bona fide* communication or disclosure made in accordance with regulation 10 or regulation 11 shall not be treated as a breach of the duty of professional secrecy or any other restriction upon the disclosure of information.

Exoneration from the duty of professional secrecy.

Format and
retrieval of records.

14. (1) A person carrying on a relevant business shall ensure that any records required to be maintained under the Act and these Regulations are capable of retrieval in legible form without undue delay.

(2) A person carrying on a relevant business may rely on the records of a third party in respect of the details of payments and transactions by customers, provided 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 enforce-
ment enquiries.

15. (1) A person carrying on a relevant business shall maintain a register of all enquires made of it by the Authority and other law authorities acting under powers provided by the Act, and any Regulations made thereunder.

(2) The register maintained under sub-regulation (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.

16. (1) A person carrying on a relevant business shall appoint or designate one of his staff as a Compliance Officer for the purposes of these Regulations.

(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 business;
- (b) be responsible for establishing and maintaining such manual of compliance procedures in relation to the relevant business;
- (c) be responsible for ensuring compliance by staff of the relevant business with-

-
- (i) the provisions of these Regulations and other law relating to money laundering;
 - (ii) the provisions of any manual of compliance procedures established under paragraph (b); and
 - (iii) the internal reporting procedures established under regulation 10;
- (d) act as the liaison between the relevant business and the Authority in matters relating to compliance with the provisions of these Regulations and other law or directive with respect to money laundering.

17. (1) A person carrying on a relevant business 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 -

Staff training.

- (a) the provisions of the Act, and these Regulations;
- (b) their personal obligations under those enactments;
- (c) the manual of compliance procedures established under regulation 16(2)(b) and the internal reporting procedures established under regulation 10;
- (d) the procedures maintained by the relevant business in compliance with the duties imposed under these Regulations; and
- (e) their personal liability for failure to report information or suspicions in accordance with internal procedures.

(2) A person carrying on a relevant business 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.

Requirements for
refresher training.

18. A person carrying on a relevant business 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 business.

Use of Guidance
Notes.

19. In the preparation of procedures required to be maintained in accordance with the provisions of these Regulations, a person carrying on a relevant business may adopt and have regard to the Guidance Notes issued by the Authority.

Suspicious
transaction
reporting forms.

20. Suspicious transaction reports shall be submitted to the Authority in the form set out in the Schedule.

Transitional
provisions.

21. (1) Nothing in these regulations shall require a person who is bound by the provisions of sub-regulation (1) of regulation 3 to maintain procedures in accordance with regulations 5 and 7 which require evidence to be obtained, in respect of any business relationship formed by him before the date on which these regulations come into force, as to the identity of the person with whom that relationship has been formed.

(2) Any business relationship referred to in subregulation (1) shall be treated as if it were an established business relationship.

2001

**MONEY LAUNDERING
(PREVENTION) REGULATIONS**

S.R.O.

SCHEDULE

FORM FOR REPORTING SUSPICION OF
MONEY LAUNDERING

*To be Completed in triplicate and submitted to the MLSA
within 5 days of transaction/encounter*

CONFIDENTIAL COVER

MONEY LAUNDERING SUPERVISORY AUTHORITY
(MLSA)

Reference No:

Date: _____

Date of Original Report*: _____

Code of Reporting Institution: _____

Code of Reporting Officer: _____

SUBJECT OF REPORT:

A: FOR INDIVIDUALS

Surname: _____

Forename: _____

Date of Birth: _____

Nationality: _____

1*. Address(es)

PO Box: _____

Telephone No.: _____

Fax No.: _____

E-Mail: _____

PO Box:

Telephone No.: _____

Fax No.: _____

E-Mail: _____

* Insert "NA" if inapplicable

A: FOR COMPANIES*:

Company Name: _____

Business Address: _____

Registered Office/Agent (if different): _____

Authorised signatory(ies):

Name(s) _____

Address(es) _____

Director(s)/Nominees

Name(s) _____

Address(es) _____

Beneficial owner(s):

Name(s) _____

Address(es) _____

DETAILS OF IDENTIFICATION EVIDENCE HELD:

Identification Document: _____

Number: _____

Date of Issue: _____

Place of Issue: _____

Name of other bank(s) or financial institution(s) involved
in transaction*:

*Delete if inapplicable

2001

**MONEY LAUNDERING
(PREVENTION) REGULATIONS**

S.R.O.

Account number(s):

Currency(ies):

Reason for Suspicion:

(Please include the name and amount of the transaction(s), the source and determination of funds, and the reason for the suspicion. Attach additional pages if necessary.)

Transaction completed Yes No

Other Relevant Information:

Signed by: *(name of reporting officer and/or other senior officer)*

Reported by: Name Signature Position Date

Received by: Name Signature Position Date

Made this day of , 2001.

AMBROSE GEORGE
Minister for Finance.