

VIRGIN ISLANDS
ANTI-MONEY LAUNDERING AND TERRORIST FINANCING
(AMENDMENT) CODE OF PRACTICE, 2023

ARRANGEMENT OF SECTIONS

SECTION

1. Citation and commencement
2. Section 2 amended
3. Section 4 amended
4. Section 4A amended
5. Section 9 amended
6. Section 11 amended
7. Section 12 amended
8. Section 13 amended
9. Section 16 amended
10. Section 17 amended
11. Section 18 amended
12. Section 19 amended
13. Section 20 amended
14. Explanation to section 21 amended
15. Section 22 amended
16. Section 23 amended
17. Section 24 amended
18. Section 25 amended
19. New section 25A inserted
20. Section 28 amended
21. New section 28A inserted
22. Section 31A amended
23. Section 41B amended
24. Section 41C amended
25. Section 46 amended
26. Section 53A amended
27. New section 53B inserted
28. Section 57 amended
29. Schedule 4 amended

VIRGIN ISLANDS
STATUTORY INSTRUMENT 2023 NO. 23
PROCEEDS OF CRIMINAL CONDUCT ACT
(REVISED EDITION 2020)

Anti-Money Laundering and Terrorist Financing (Amendment) Code of Practice, 2023

[Gazetted 16th March, 2023]

The Financial Services Commission, pursuant to the powers conferred by section 27(1) of the Proceeds of Criminal Conduct Act, Revised Edition 2020 and after consultation with the Joint Anti-money Laundering and Terrorist Financing Advisory Committee, amends the Anti-Money Laundering and Terrorist Financing Code of Practice, Revised Edition 2020:

Citation and commencement

- 1.** (1) This Code may be cited as the Anti-Money Laundering and Terrorist Financing (Amendment) Code of Practice, 2023.
(2) This Code shall come into force on the 17th day of March, 2023.

Section 2 amended

2. Section 2 of the Anti-Money Laundering and Terrorist Financing Code of Practice, Revised Edition 2020, (hereinafter referred to as “the principal Code of Practice”) is amended

- (a) in the definition of “Agency”, by deleting the words “section 3” and substituting the words “section 3(1)”;
- (b) in the definition of “control”, by deleting the words “without any ownership interest” and substituting the words “with or without any ownership interest”; and
- (c) in the definition of “high risk countries”, in paragraph (d), by inserting a comma, after the words “anti-money laundering”.

Section 4 amended

- 3.** Section 4(1) of the principal Code of Practice is amended in subsection (1)
 - (a) in paragraph (a), by deleting the word “and”;
 - (b) in paragraph (b), by deleting the full-stop and substituting the word “; and”; and
 - (c) by inserting after paragraph (b), the following new paragraph

“(c) every person that acts as a trustee in the Virgin Islands, in relation to section 28A only.”.

The Explanation to section 4 of the principal Code of Practice is amended in paragraph (iv), by deleting the words “pursuant to section 23(2D) of this Code” and substituting the words “pursuant to section 23(2C) of this Code.”

Section 4A amended

4. Section 4A of the principal Code of Practice is amended

(a) in subsection (7), by deleting the words “a charity or other association not for profit” and substituting the words “an NPO”; and

(b) by deleting subsection (8) and substituting the following subsection

“(8) Schedule 1 provides best practices for NPOs, and every NPO shall govern its activities utilising those best practices, in addition to complying with the other requirements of this Code applicable to it.”.

Section 9 amended

5. Section 9 of the principal Code of Practice is amended in subsection (5), by deleting the words “the Proceeds of Criminal Conduct Act” and substituting the words “the Act”.

Section 11 amended

6. Section 11 of the principal Code of Practice is amended in subsection (3A)(a), by inserting after the words “those internal controls”, the words “and enhance such controls as necessary”.

Section 12 amended

7. Section 12 of the principal Code of Practice is amended in subsection (2), by inserting after paragraph (b), the following new paragraph

“(ba) take into account any higher money laundering, terrorist financing or proliferation financing risks that may be identified by a national risk assessment and any risk assessment conducted by a competent authority, law enforcement agency or any other authority with responsibility relating to money laundering, terrorist financing and proliferation financing;”

The Explanation to section 12 of the principal Code of Practice is amended in paragraph (ii) by deleting the words “identify the areas that should be prioritised to combat ML/TF” and substituting the words “identify the areas that should be prioritised to combat ML/TF”.

Section 13 amended

8. Section 13 of the principal Code of Practice is amended in subsection (4), by deleting the words “the Proceeds of Criminal Conduct Act” and substituting the words “the Act”.

Section 16 amended

9. Section 16 of the principal Code of Practice is amended in subsection (1), by deleting the word “regulations” and substituting the word “Regulations”.

Section 17 amended

10. Section 17 of the principal Code of Practice is amended in subsection (2), by deleting the words “the Proceeds of Criminal Conduct Act” and substituting the words “the Act”.

Section 18 amended

11. Section 18 of the principal Code of Practice is amended in subsection (7)(b), by deleting the words “the Proceeds of Criminal Conduct Act” and substituting the words “the Act”.

Section 19 amended

12. Section 19 of the principal Code of Practice is amended,

- (a) in subsection 3(b), by inserting after the word “to”, the words “understand and”;
- (b) in subsection (4),
 - (i) by deleting paragraph (b) and substituting the following paragraph
“(b) when effecting a one-off transaction that involves funds of \$15,000 or above, including where the transaction is carried out in a single operation or in several operations that appear to be linked, or such lower threshold as the entity or professional may establish”;
 - (ii) in paragraph (ba), by inserting after the words “valued at or above \$1,000”, the words “including where the transaction is carried out in a single operation or in several operations that appear to be linked”;
 - (iii) in paragraph (bb), by deleting the words “involving funds of or above \$3,000 or the equivalent in any other currency” and substituting the words “of \$3,000 or above or the equivalent in any other currency including where the transaction is carried out in a single operation or in several operations that appear to be linked”; and
 - (iv) by inserting after paragraph (bb), the following new paragraph
“(bc) when effecting a one-off transaction that is a wire transfer involving funds of \$1,000 or above, including where the transaction is carried out in a single operation

or in several operations that appear to be linked or such lower threshold as the entity or professional may establish;”;

- (c) in subsection (7), by inserting at the end of the subsection before the full-stop, the words “commensurate with the lower risk factors identified”; and
- (d) in subsection (9)(b), by deleting the words “section 18(1)” and substituting the words “section 17(1)”.

Section 20 amended

13. Section 20 of the principal Code of Practice is amended in subsection (6), by inserting after the words “legal person”, the words “or legal arrangement”.

Explanation to section 21 amended

14. The Explanation to section 21 of the principal Code of Practice is amended in paragraph (xiii), by inserting after the words “at least once annually”, the words “and remaining customers within a 4-year cycle, prioritised based on the level of risk posed”.

Section 22 amended

15. Section 22 of the principal Code of Practice is amended in subsection (1B), by inserting after the words “as if the domestic politically exposed person”, the words “or international organisation politically exposed person”.

Section 23 amended

16. Section 23 of the principal Code of Practice is amended

- (a) in subsection (2), by deleting paragraph (a) and substituting the following paragraph
 - “(a) the verification is completed as soon as reasonably practicable;”;
- (b) by deleting subsection (2A); and
- (c) in subsection (7), by deleting the words “the Proceeds of Criminal Conduct Act” and substituting the words “the Act”.

The Explanation to section 23 of the principal Code of Practice is amended in paragraph (iii), by inserting before the figure “28”, the word “Section”.

Section 24 amended

17. Section 24 of the principal Code of Practice is amended in section (7), by deleting the words “the Proceeds of Criminal Conduct Act” and substituting the words “the Act”.

Section 25 amended

18. Section 25 of the principal Code of Practice is amended in subsection (2)

- (a) in paragraph (a)

- (i) in the opening paragraph, by inserting after the word “obtain”, the words “proof of existence of the legal person and”;
 - (ii) in subparagraph (iii), by inserting after the words “of the legal person”, the words “and the legal form of the legal person”;
 - (iii) in subparagraph (viii), by deleting the word “and” at the end of the paragraph;
- (b) by deleting the full-stop at the end of paragraph (b)(iii), and substituting the words “; and”; and
- (c) by inserting after paragraph (b), the following new paragraph
- “(c) understand the nature of the legal person’s business and its ownership and control structure.”.

New section 25A inserted

19. The principal Code of Practice is amended by inserting immediately after section 25, the following new section

“Disclosure of nominator or other person

25A. (1) This section applies to an entity or professional that provides, or arranges for another to provide, director or nominee shareholder services.

(2) Where an entity or a professional acts as a director of a legal person, and accepts instruction from another person in relation to the directorship, the entity or professional shall inform the legal person of that fact and disclose to the legal person the identity of the person from whom it accepts instruction.

(3) Where an entity or a professional acts as nominee shareholder of a legal person, the entity or professional shall inform the legal person of that fact and disclose the identity of its nominator to the legal person.

(4) The disclosure of identity required under subsections (2) and (3) shall include the full name, gender, principal residential address and date of birth of the applicable person.”.

Section 28 amended

20. Section 28 of the principal Code of Practice is amended in subsection (1)

- (a) in paragraph (a)
 - (i) in the opening paragraph, by inserting after the word “obtaining”, the words “proof of existence of the trust and”;
 - (ii) in subparagraph (i), by inserting after the words “the name”, the words “and legal form”; and
 - (iii) in subparagraph (vi), by deleting the word “and” at the end of the subparagraph;
- (b) by deleting the full-stop at the end of paragraph (b)(ii), and substituting the words “; and”; and
- (c) by inserting after paragraph (b), the following new paragraph

“(c) understanding the nature of the trust’s business and its ownership and control structure.”.

The Explanation to section 28 of the Code of Practice is amended in paragraph (ii), by deleting the words “in subsection 1(a) above” and substituting the words “in subsection (1) above”.

New section 28A inserted

21. The principal Code of Practice is amended by inserting immediately after section 28, the following new section

“Trustees

28A. (1) A trustee, including a trustee that is an entity or a professional, when acting on behalf of a trust, shall disclose his or her status as a trustee to an entity or professional when establishing a business relationship or carrying out a one-off transaction with that entity or professional, on behalf of the trust for which he or she acts as trustee.

(2) A trustee shall obtain and maintain information on the beneficial owners of a trust for which he or she acts as trustee.

(3) A trustee shall obtain the name and address of any regulated agent of, and service provider to, the trust, including any investment advisor or manager, accountant and tax advisor.

(4) A trustee shall keep any information required to be kept under this section

(a) accurate and up to date; and

(b) update such information on a timely basis.

(5) A trustee shall maintain information obtained in subsections (2), (3) and (4) for at least 5 years after his or her involvement with the trust ceases.

(6) A trustee that does not obtain or maintain information in accordance with subsections (2), (3), (4) or (5) commits an offence and is liable to be proceeded against under section 27(4) of the Act.

(7) In this section, a reference to “trustee”, as the context requires, means a trustee that is not an entity or a professional.”.

Section 31A amended

22. Section 31A of the principal Code of Practice is amended, by revoking subsection (5).

Section 41B amended

23. Section 41B of the principal Code of Practice is amended in subsection (2), by deleting the words “which is sent” and substituting the words “which are sent”.

Section 41C amended

24. Section 41C of the principal Code of Practice is amended

- (a) in subsection (7), by deleting the words “A beneficiary virtual asset service provider” and substituting the words “An originating virtual asset service provider”; and
- (b) in subsection (8), by deleting the words “a beneficiary virtual asset service provider” and substituting the words “an originating virtual asset service provider”.

Section 46 amended

25. Section 46 of the principal Code of Practice is amended in subsection (1)(d), by deleting the words “recognised pursuant to section 52” and substituting the words “not a high risk country and is not determined to pose a higher risk based on the entity’s or professional’s risk assessment”.

Section 53A amended

26. Section 53A of the principal Code of Practice is amended,

- (a) by redesignating the existing provision as subsection (1);
- (b) in subsection (1) as redesignated, in paragraph (c), by inserting after the words “for AML/CFT purposes”, the words “, including information and analysis of transactions or activities which appear unusual, if such analysis was done”; and
- (c) by inserting after subsection (1) as redesignated, the following new subsections

“(2) Information and analysis of transactions or activities which appear unusual, as required to be provided under subsection (1)(c) shall include suspicious transaction reports, along with their underlying information, and the fact that suspicious transaction reports have been filed.

(3) Branches and subsidiaries of a financial group shall receive information provided under subsection (1)(c), where relevant and appropriate, for the management of money laundering, terrorist financing and proliferation financing risk.”.

New section 53B inserted

27. The principal Code of Practice is amended by inserting immediately after section 53A, the following new section

“Money services business and agents

53B.(1) An entity or a professional that carries on money services business through agents shall

- (a) include agents in its AML/CFT compliance programme; and
- (b) monitor the compliance of agents with its AML/CFT compliance programme.

(2) An entity or a professional that fails to comply with the requirements of subsection (1) commits an offence and is liable to be proceeded against under section 27(4) of the Act.

(3) In this section, reference to “agent” means a branch, representative office or contact office, or any other person providing money services business on behalf of the entity or professional, for which prior approval must be sought in accordance with section 16 of the Financing and Money Service Act, Revised Edition, 2020.”.

Section 57 amended

28. Section 57 of the principal Code of Practice is amended in subsection (3), by inserting after the words “the Commission”, the words “or the Agency,”.

Schedule 4 amended

29. Schedule 4 of the principal Code of Practice is amended by inserting in the appropriate numerical order, the following

| | | | |
|-----------------|---|-----------|----------|
| 41A (b) | Failure to file a suspicious transaction report in country affected by suspicious transfer of funds | \$80,000 | \$70,000 |
| 41C (1) and (3) | Failure to obtain, maintain and submit complete originator and beneficiary information with transfer of virtual assets, or to verify complete originator information | \$80,000 | \$75,000 |
| 41C (9) | Failure to keep complete originator information and complete beneficiary information | \$100,000 | \$80,000 |
| 41E (2) and (4) | Failure to keep information on originator and beneficiary that accompanies a transfer of virtual assets, or provide information on originator or beneficiary accompanying the transfer of virtual assets within the specified time period | \$80,000 | \$75,000 |
| 41F(b) | Failure to file a suspicious transaction report in country affected by suspicious transfer of virtual assets | \$80,000 | \$70,000 |

Issued by the Financial Services Commission this 15th day of March, 2023.

(Sgd.) Kenneth Baker
Managing Director/CEO
Financial Services Commission