



## ANGUILLA FINANCIAL SERVICES COMMISSION

16 June 2023

### **Consultation Note**

### **Amendments to Anti-Money Laundering and Terrorist Financing Regulations Amendments to the Anti-Money Laundering and Terrorist Financing Code**

The Anguilla Financial Services Commission (the “Commission”) has issued the above-noted legislation for consultation. As part of the ongoing legislative reform to ensure compliance with the Financial Action Task Force (FATF) Recommendations, a review and update of the AML/CFT legislative framework is being carried out.

In this vein, the Commission has drafted Amendments to Anti-Money Laundering and Terrorist Financing Regulations to ensure compliance mainly with the FATF Recommendation 15 – New Technology and FATF Methodology.

The Commission hereby invites persons to make comments on the draft legislation. Persons are invited to provide comments no later than **22 June 2023** to the Commission at [sherine.brooks@afsc.ai](mailto:sherine.brooks@afsc.ai)

## **Interpretation**

1. In this Part “Regulations” means the Anti-Money Laundering and Terrorist Financing Regulations.

### **Amendment of section 1**

2. Section 1 of the Regulations is amended—

- (a) by deleting [previous definition of “financial business”]
- (b) by inserting the following definitions in the appropriate alphabetical order—

“virtual asset” means—

- (a) a utility token within the meaning of the Anguilla Utility Token Offering Act, 2018;
- (b) a digital asset within the meaning of the Digital Assets Business Act, 2023;
- (c) a digital payment token within the meaning of the Digital Assets Business Act, 2023;

“virtual asset service provider” means a person who—

- (a) is registered as an issuer or licensed as a utility token offering administrator under the Anguilla Utility Token Offering Act, 2018;
- (b) is licensed as a utility token exchange under the Utility Token Exchange Act, 2020; or
- (c) is licensed as a digital asset business under the Digital Assets Business Act, 2023.

### **Amendment of section 3**

3. Section 3 of the Regulations is amended by inserting the following subsection after subsection (2)—

“(3) In the case of a virtual asset provider, a single transaction or two or more linked transactions shall be regarded as an occasional transaction regardless of the amount, and the minimum amounts specified in subsection (2) do not apply.

### **Amendment of section 9**

4. Section 9(2) of the Regulations is amended by deleting “A financial business” and substituting “An Anguilla financial business”.

### **Amendment of section 10**

5. Section 10(6b) of the Regulations is amended by deleting paragraph (b) and substituting the following—

“(b) the service provider—

- (i) suspects money laundering or terrorist financing and reasonably believes that continuing to apply due diligence measures would tip-off the customer, third party or beneficial owner; or
- (ii) makes a money laundering disclosure or a terrorist financing disclosure;”.

### **Amendment of section 13**

6. Section 13(2) of the Regulations is amended—

- (a) in paragraph (b), by deleting “and the evidence of identification” and substituting “, the evidence of identification and other relevant information relating to the customer due diligence measures applied by the intermediary or introducer”;

- (b) in paragraph (c), by deleting “the information in that record” and substituting “the information and evidence referred to in paragraph (b)”;
- (c) in paragraph (d), by deleting “the information in the record” and substituting “the information and evidence referred to in paragraph (b)”.

#### **Amendment of section 16**

7. Section 16(2) of the Regulations is amended by inserting the following paragraph after paragraph (b)—

- “(ba) the receipt by branches and subsidiaries of customer, account, and transaction information from group level compliance, audit, and anti-money laundering and anti-terrorist financing functions when necessary for anti-money laundering and antiterrorist financing purposes;”.

#### **Insertion of Part 4A**

8. The Regulations are amended by inserting the following after Part 4—

### “PART 4A

### TRANSFERS OF VIRTUAL ASSETS

#### **Definitions for this Part**

**21A.** In this Part—

“batch file transfer of virtual assets” means several individual transfers of virtual assets which are bundled together for transmission;

“beneficiary”, in relation to the transfer of a virtual asset, means the person or the legal arrangement that will own the virtual asset on completion of the transfer;

“beneficiary information” means—

- (a) the name of the beneficiary; and
- (b) the account number of the beneficiary or, where an account is not used to process the transfer of assets or where the account number is not available, a unique transaction reference number that permits the transfer of virtual assets to be traced back to the beneficiary;

“beneficiary virtual asset service provider” means a virtual asset service provider which receives a transfer of virtual assets on behalf of a beneficiary;

“foreign virtual asset service provider” means a person that—

- (a) carries on a business that, if carried on in Anguilla, would require the person to be—
  - (i) registered as an issuer under the Anguilla Utility Token Offering Act, 2018;
  - (ii) licensed as a utility token offering Administrator under the Anguilla Utility Token Offering Act, 2018;
  - (iii) licensed as a utility token exchange under the Utility Token Exchange Act, 2020; or
  - (iv) licensed as a digital asset business under the Digital Assets Business Act, 2023;

- (b) is licensed or registered and is supervised for that business by a government or supervisory authority in a country outside Anguilla that is not a high-risk country;

“high-risk country” means a country—

- (a) which does not apply, or insufficiently applies the FATF Recommendations; or
- (b) against which the FATF calls for countermeasures;

“intermediary virtual asset service provider” means a virtual asset service provider which —

- (a) participates in the execution of a transfer of virtual assets; and
- (b) is not the originating virtual asset service provider or the beneficiary virtual asset service provider;

“originating virtual asset service provider” means a virtual asset service provider which conducts a transfer of virtual assets on behalf of an originator;

“originator”, in relation to a transfer of virtual asset, means—

- (a) the person or legal arrangement that places an order with the virtual asset service provider for the virtual asset transfer; or
- (b) where the transfer is carried out by a virtual asset service provider on behalf of a client or other third party, the client or third party who owned the virtual asset immediately before the transfer;

“originator information” means—

- (a) the name of the originator;
- (b) one of the following, with respect to the originator—
  - (i) the address of the originator;
  - (ii) the number of a government-issued document evidencing the originator’s identity;
  - (iii) the originator’s customer identification number; or
  - (iv) the originator’s date and place of birth; and
- (c) the account number of the originator or, where an account is not used to process the transfer of assets or where the account number is not available, the unique transaction reference number that permits the transfer of virtual assets to be traced back to the originator;

“transfer of virtual asset” means any transaction carried out on behalf of an originator with a view to making the virtual asset available to a beneficiary.

### **Transfers of virtual assets to a beneficiary**

**21B.** (1) An originating virtual asset service provider shall, when conducting a transfer of virtual assets to a beneficiary, collect and record—

- (a) the originator information; and
- (b) the beneficiary information.

(2) An originating virtual asset service provider shall, before conducting the transfer of virtual assets, verify the information on the originator under subsection (1) on the basis of documents, data or information obtained from a reliable source.

(3) An originating virtual asset service provider shall provide the information under subsection (1) to the beneficiary virtual asset service provider or foreign virtual asset service provider simultaneously or concurrently with the transfer of virtual assets.

(4) An originating virtual asset service provider may provide the originator information and the beneficiary information to the beneficiary virtual asset service provider or foreign virtual asset service provider directly by attaching the information to the transfer of virtual assets or providing the information indirectly.

(5) An originating virtual asset service provider shall ensure that transfers of virtual assets are conducted using a system which prevents the unauthorised disclosure of the information under subsection (1) to a person other than the originating virtual asset service provider, the beneficiary virtual asset service provider or the foreign virtual asset service provider.

(6) An originating virtual asset service provider shall keep records of the originator information and the beneficiary which accompanies each transfer of virtual assets for a period of at least five years.

#### **Obligations of a beneficiary virtual asset service provider**

**21C.** (1) A beneficiary virtual asset service provider shall, on receipt of a transfer of virtual assets, collect and record the originator information and the beneficiary information.

(2) A beneficiary virtual asset service provider shall verify the accuracy of information on the beneficiary under subsection (1) on the basis of documents, data or information documents, data or information obtained from a reliable source.

(3) A beneficiary virtual asset service provider shall keep records of the originator information and the beneficiary information which accompanies each transfer of virtual assets for a period of at least five years.

#### **Duty to produce information**

**21D.** (1) The Commission may, by notice in writing, require an originating virtual asset service provider or a beneficiary virtual asset service provider to provide information in respect of a transfer of virtual assets carried out under this Part.

(2) An originating virtual asset service provider or a beneficiary virtual asset service provider which receives a notice under subsection (1) shall comply with that notice within the period and in the manner specified in the notice.

#### **Batch file transfers of virtual assets**

**21E.** Section 21B does not apply in the case of a batch file transfer of virtual assets from a single originator, if—

- (a) the batch file contains—
  - (i) the originator information; and
  - (ii) the beneficiary information; and
- (b) each individual transfer of virtual assets bundles together in the batch file carries the account number of the originator or a unique transaction reference number that permits the transfer of virtual assets to be traced back to the originator.

### **Obligations of a beneficiary virtual asset service provider**

**21F.** A beneficiary virtual asset service provider shall have effective procedures in place in order to detect whether, in the messaging or payment and settlement system or equivalent system used to effect a transfer of virtual assets, the information required under sections 21B(1), 21E and 21MK is obtained in accordance with these Regulations.

### **Transfers of virtual assets with missing or incomplete information about the originator**

**21G.** (1) An originating virtual asset service provider shall not execute transfers of virtual assets where the originating virtual asset service provider is unable to collect and maintain information on the originator and beneficiary as required under regulation 21B(1) and 21E.

(2) A beneficiary virtual asset service provider shall have effective systems in place to detect missing required information on both the originator and beneficiary.

(3) Where a beneficiary virtual asset service provider detects, when receiving transfers of virtual assets, that information on the originator required under this Part is missing or incomplete, the beneficiary virtual asset service provider shall either reject the transfer of virtual assets or request complete information on the originator.

(4) A beneficiary virtual asset service provider shall adopt risk-based policies and procedures for determining, where the required originator or beneficiary information is incomplete—

- (a) whether to execute, reject or suspend a transfer of virtual assets; and
- (b) the resulting procedures to be applied.

(5) Where an originating virtual asset service provider regularly fails to supply the required information on the originator, the beneficiary virtual asset service provider shall adopt reasonable measures to rectify noncompliance with these Regulations before—

- (a) rejecting any future transfers of virtual assets from that originating virtual asset service provider;
- (b) restricting its business relationship with that originating virtual asset service provider; or
- (c) terminating its business relationship with that originating virtual asset service provider.

(6) A beneficiary virtual asset service provider shall report to the Commission any decision that it takes under subsection (5) to restrict or terminate its business relationship with that originating virtual asset service provider.

### **Assessment and reporting of suspicious transfers of virtual assets**

**21H.** A beneficiary virtual asset service provider shall consider incomplete information about the originator as a factor in assessing whether a transfer of virtual assets, or any related transaction, is suspicious and where it is determined that the transaction is suspicious, the suspicious transaction shall be reported to the Unit in accordance with the Act.

### **Information accompanying a transfer of virtual assets**

**21I.** An intermediary virtual asset service provider which participates in a transfer of virtual assets shall ensure that all information received on the originator and the beneficiary that accompanies a transfer of virtual assets is kept with the transfer of virtual assets.

### **Straight-through processing of transfers of virtual assets**

**21J.** An intermediary virtual asset service provider shall—

- (a) take reasonable measures, which are consistent with straight-through processing, to identify transfers of virtual assets that lack required originator or beneficiary information; and
- (b) adopt risk-based policies and procedures for determining, where the required originator or beneficiary information is incomplete—
  - (i) when to execute, reject or suspend a transfer of virtual assets; and
  - (ii) the resulting procedures to be applied.

### **Obligation of a virtual asset service provider to comply with requirements**

**21K.** A virtual asset service provider shall comply with all the relevant requirements under this Part in the countries in which they operate, either directly or through the agents of the virtual asset service provider.

### **Obligation of a virtual asset service provider to file suspicious activity report**

**21L.** A virtual asset service provider, that controls both the originating virtual asset service provider and the beneficiary virtual asset service provider, shall—

- (a) consider the information from both the originating virtual asset service provider and the beneficiary virtual asset service provider to determine whether it should make a suspicious activity report; and
- (b) make a suspicious activity report in the country from which the transfer of virtual assets originated or to which the transfer of virtual assets was destined and make relevant transaction information available to the Unit and the relevant authorities in the country from which the transfer originated or to which it was destined.

### **Technical limitations related to transfers of virtual assets**

**21M.** Where technical limitations prevent an intermediary virtual asset service provider from sending the required originator or beneficiary information with the transfer of virtual assets, the intermediary virtual asset service provider shall keep a record of all the information received from the originating virtual asset service provider, foreign virtual asset service provider or other intermediary, for at least five years.

### **Intermediary virtual asset service provider to have risk-based policies**

**21N.** An intermediary virtual asset service provider shall have risk-based policies and procedures for determining—

- (a) when to execute, reject, or suspend a transfer of virtual assets lacking required originator or required beneficiary information; and
- (b) the appropriate follow-up action.

### **Amendment of Schedule 1**

**9.** Schedule 1 of the Regulations is amended—

- (a) by deleting paragraph (c); and
- (b) by inserting the following paragraphs after paragraph (k)—
  - “(l) a licence issued under the Digital Business Assets Act;

(m) registration as a co-operative society under the Cooperative Societies Act, 2023.”.

**Amendment of Schedule 2**

**10.** Schedule 2 of the Act is amended—

(a) in item 1—

(i) by deleting paragraph (e) and substituting the following—

“(e) a person who, by way of business—

(i) provides accountancy or audit services, or

(ii) acts as a real estate agent, when the person is involved in a transaction concerning the buying and selling of real estate;”;

(ii) by deleting paragraph (i); and

(b) by deleting item 4A.

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## **Interpretation**

1. In this Part “Code” means the Anti-Money Laundering and Terrorist Financing Code.

## **Amendment of section 3**

2. The Code is amended in section 3—

- (a) by inserting the following subsection after subsection (2)—

“(2A) A service provider shall identify and assess the money laundering and terrorist financing risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products.”; and

- (b) in subsection (3), by inserting “and subsection (2A)” after “subsection (2)”.

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