In exercise of the powers conferred upon the Minister of Finance by section 49 of the Proceeds of Crime Act 1997, the following regulations are hereby made:—

**Citation and commencement**

These Regulations may be cited as the Proceeds of Crime (Money Laundering) Regulations 1998 and shall come into force on 30th January 1998.
PROCEEDS OF CRIME (MONEY LAUNDERING) REGULATIONS 1998

Interpretation
2  (1) For the purpose of these Regulations, “money laundering”, and other expressions used in the Proceeds of Crime Act 1997, shall have the meaning given by that Act.

(2) In these Regulations—

(a) "regulated institution" means—

(i) a bank licensed under the Banks Act 1969;

(ii) a deposit company licensed under the Deposit Companies Act 1974;

(iii) a trust company licensed under the Trust Companies Act 1991, and any other person to the extent that he is carrying on trust business (as defined in that Act) in or from within Bermuda;

(iv) a company or society registered under the Insurance Act 1978 to the extent that it is carrying out long-term insurance (but not reinsurance) business within the meaning of that Act, other than life insurance or disability insurance;

(v) a credit union registered under the Credit Unions Act 1982;

(vi) a person processing subscriptions or redemptions related to a collective investment scheme (as defined in section 1(2)(a) of the Bermuda Monetary Authority Act 1969);

(vii) a trading member of the Bermuda Stock Exchange resident or, in relation to a body corporate, with a place of business, in Bermuda;

(viii) a trading member or futures commission merchant of the Bermuda Commodities Exchange, or a member of the Bermuda Commodities Exchange Clearing House, resident or, in relation to a body corporate, with a place of business, in Bermuda;

(ix) a person authorised by the Bermuda Monetary Authority to offer currency exchange services;

(x) a voluntary regulated institution;
(b) "voluntary regulated institution" means a person or entity whose application to be a voluntary regulated institution has been approved under regulation 3;

(c) "foreign regulated institution" means a person or entity subject to regulation in any other jurisdiction which is at least equivalent to these Regulations;

(d) "employee", in relation to a regulated institution, includes an officer or director of the institution and any person appointed to manage its business.

Voluntary regulated institutions

3  (1) Any person or entity who does not fall within the definition of regulated institution in regulation 2(2)(a) by virtue of paragraphs (i) to (ix) may apply in writing to the Minister to become a voluntary regulated institution for the purposes of these Regulations.

(2) Before granting or refusing such an application, the Minister shall consult the National Anti-Money Laundering Committee and shall consider the ability of the applicant to comply with these Regulations.

(3) In any case where the Minister—

(a) receives written notice from a voluntary regulated institution that it no longer wishes to be regulated and, having consulted the National Anti-Money Laundering Committee, he is satisfied that it is appropriate that it should no longer be a voluntary regulated institution; or

(b) having consulted the National Anti-Money Laundering Committee, no longer considers that a voluntary regulated institution is able to comply with these Regulations,

he shall notify the institution that from the date of the notice it shall cease to be a voluntary regulated institution but must continue to keep, in accordance with regulation 5, all records relating to its business before that date.

(4) The Minister shall from time to time issue a list of voluntary regulated institutions.

Identification procedures

4  (1) A regulated institution shall establish and maintain identification procedures which require—
(a) that any applicant for business of a type mentioned in paragraph (2) shall produce satisfactory evidence of his identity as soon as practicable after first making contact with the regulated institution; and

(b) that where such satisfactory evidence is not obtained the business in question shall not proceed any further or, in relation to business mentioned in paragraph (2)(d), shall only proceed in accordance with any directions that may be given for the purpose by a police officer.

(2) This regulation applies to the following types of business—

(a) the forming of a business relationship;

(b) a one-off transaction where payment is to be made by or to the applicant of $10,000 or more;

(c) two or more one-off transactions which—

(i) appear to any person handling the transaction on behalf of the regulated institution to be linked, and

(ii) in respect of which the total amount payable by or to the applicant is $10,000 or more;

(d) where in respect of any one-off transaction any person handling the transaction on behalf of the regulated institution knows or suspects—

(i) that the applicant is engaged in money laundering; or

(ii) that the transaction is carried out on behalf of another person engaged in money laundering.

(3) Where an applicant for business is introduced to a regulated institution by another regulated institution or foreign regulated institution, a written assurance from the introducing institution to the effect that evidence of the identity of the applicant has been obtained and recorded under procedures maintained by the introducing institution shall be satisfactory evidence of identity for the purposes of paragraph (1).

(4) A regulated institution shall establish and maintain identification procedures which require that, in any case where an applicant for business appears to be acting otherwise than as principal, reasonable measures shall be taken for the purpose of establishing the identity of the person on whose behalf the applicant for business is acting.
(5) Where the applicant for business in a case mentioned in paragraph (4) is another regulated institution or a foreign regulated institution, it shall be reasonable for the regulated institution to accept a written assurance from the applicant for business to the effect that evidence of the identity of the principal has been obtained and recorded under procedures maintained by the applicant for business.

(6) In this regulation—

"$10,000" means $10,000 or any foreign currency equivalent;

"applicant for business" means any person, seeking to form a business relationship, or carry out a one-off transaction, with a regulated institution;

"business relationship" means any arrangement between any person and a regulated institution, the purpose of which is to facilitate the carrying out of financial and other related transactions on a regular basis;

"established business relationship" means a business relationship in relation to which the regulated institution has obtained satisfactory evidence of identity of the applicant for business as required by this regulation;

"one-off transaction" means a transaction carried out other than in the course of an established business relationship.

(7) For the purposes of this regulation, the question as to what constitutes—

(a) satisfactory evidence of identity, or

(b) reasonable measures for establishing the identity of a principal,

may be determined in accordance with any relevant guidance issued by the National Anti-Money Laundering Committee.

Record-keeping procedures

5 (1) Where a regulated institution obtains evidence of a person’s identity as required by regulation 4 it shall keep for the minimum retention period—

(a) a copy of that evidence; or

(b) a record indicating the nature of that evidence and providing such information as would enable a copy of it to be obtained.
(2) A regulated institution shall also keep for the minimum retention period such records or copies of records containing such details relating to its business as may be necessary to assist an investigation into suspected money laundering.

(3) A regulated institution shall keep all such records or copies in such a way as to allow for their retrieval in legible form within a reasonable period of time.

(4) For the purposes of this regulation, the minimum retention period in relation to a record held by a regulated institution is—

(a) if the record relates to the opening of an account with the institution, the period of five years after the day on which the account is closed;

(b) if the record relates to the renting by a person of a deposit box held by the institution, the period of five years after the day on which the deposit box ceases to be used by the person; or

(c) in any other case, the period of five years after the day on which the transaction recorded takes place;

but in any case where a police officer has notified a regulated institution in writing that particular records are or may be relevant to an investigation which is being carried out, records shall be retained pending the outcome of the investigation.

(6) For the purposes of this regulation, the question as to what records may be necessary to assist an investigation into suspected money laundering may be determined in accordance with any relevant guidance issued by the National Anti-Money Laundering Committee.

**Internal reporting procedures**

6 (1) A regulated institution shall institute and maintain internal reporting procedures which include provision—

(a) identifying a person (“the reporting officer”) to whom a report is to be made of any information or other matter which comes to the attention of an employee and which in the opinion of that employee gives rise to a knowledge or suspicion that another person is engaged in money laundering;

(b) requiring that any such report be considered by the reporting officer in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
(c) allowing the reporting officer to have access to any other information which may be of assistance to him in considering the report; and

(d) requiring the reporting officer to disclose to a police officer the information or other matter contained in a report, where the reporting officer knows or suspects that a person is engaged in money laundering.

Training procedures
7 (1) A regulated institution shall take appropriate measures from time to time for the purpose of making all relevant employees aware

(a) of the Proceeds of Crime Act 1997, these Regulations and any other statutory provision relating to money laundering; and

(b) of the procedures maintained by the institution in compliance with the duties imposed under these Regulations.

(2) A regulated institution shall provide all relevant employees from time to time with appropriate training 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.

(3) Training under this regulation shall in addition be given to all new relevant employees as soon as practicable after their appointment.

(4) For the purposes of this regulation, an employee is a relevant employee 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.

Offences
8 (1) A person who carries on business without complying with the requirements of these Regulations shall be guilty of an offence and liable—

(a) on summary conviction to a fine of $10,000;

(b) on conviction on indictment—

(i) for a first offence, to a fine of $50,000;

(ii) for a second or subsequent offence, to a fine of $100,000.
(2) In determining whether a person has complied with the requirements of these Regulations, the trial court may take account of any relevant guidance issued by the National Anti-Money Laundering Committee.

(3) In proceedings for an offence under these Regulations it shall be a defence to prove that a person took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations.

(4) Section 56 of the Proceeds of Crime Act 1997 (offences by bodies corporate) shall apply in relation to offences under these Regulations as it applies to offences under that Act.

**Transitional provision**

9  (1) In this regulation, "pre-existing business relationship" means a business relationship (as defined in regulation 4) formed by a regulated institution before the date on which these Regulations come into effect.

(2) For the purposes of regulation 4, any pre-existing business relationship shall be treated as an established business relationship.

(3) Nothing in these Regulations shall require a regulated institution to maintain procedures which require evidence to be obtained in respect of any pre-existing business relationship as to the identity of the person with whom that relationship has been formed.

(4) Where an application under regulation 3 is granted, paragraph (1) shall apply to the voluntary regulated institution in question with the substitution for the words "before the date on which these Regulations come into effect" of the words "before the date on which its application under regulation 3 is granted."