

ANTIGUA AND BARBUDA



THE MONEY LAUNDERING (PREVENTION) REGULATIONS, 2007

STATUTORY INSTRUMENT

2007 No. 38

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THE MONEY LAUNDERING (PREVENTION) REGULATIONS 2007

ARRANGEMENT

Regulations

**PART I
GENERAL**

1. Short title.
2. Interpretation.

**PART II
OBLIGATIONS ON PERSONS WHO CARRY ON RELEVANT BUSINESS**

3. Systems and training to prevent money laundering.
4. Identification procedures
5. Record-keeping procedures
6. Internal reporting procedures
7. Casinos
8. Use of disclosed information

**PART III
PRESCRIBED FORMS FOR PURPOSES OF SECTION 18 OF THE ACT**

9. Form reporting by person transferring currency
10. Form reporting by third party transferring currency on behalf of a person
11. Reportable details under section 18C
12. Further details in respect of incorrect report
13. Penalty for disclosure of information

**PART IV
MISCELLANEOUS**

14. Regulators etc. to report evidence of money laundering
15. Annual review and audit report
16. Revocation

SCHEDULES

- Schedule I
- Schedule II

ANTIGUA AND BARBUDA

THE MONEY LAUNDERING (PREVENTION) REGULATIONS, 2007

2007, No. 38

THE MONEY LAUNDERING (PREVENTION) REGULATIONS 2007 made by the Minister in exercise of the powers conferred on him by section 29 of the Money Laundering (Prevention) Act, 1996 No. 9 of 1996.

PART 1

GENERAL

1. Short title

These Regulations may be cited as the Money Laundering (Prevention) Regulations 2007.

2. Interpretation

(1) In these Regulations:—

“Act” means the Money Laundering (Prevention) Act, 1996, No. 9 of 1996 as amended;

“AML/CFT” means anti-money laundering and combating the financing of terrorism;

“applicant for business” means a person, whether natural or legal and whether acting as principal or agent, seeking to form a business relationship or carry out a one-off transaction with another person acting in the course of relevant business;

“business relationship” means any arrangement the purpose of which is to facilitate the carrying out of transactions on a frequent, habitual or regular basis where the total amount of any payments to be made by any person to any other in the course of the arrangement is not known or capable of being ascertained at the outset;

“cash” means notes, coins or travellers’ cheques in any currency;

“casino” includes land-based and physical casino, but does not include virtual or internet casino;

“customer” means an applicant for business, a person with whom a financial institution has a

business relationship, or a person seeking to do a one-off transaction;

“customer due diligence” includes:

- (a) undertaking the following measures—
 - (i) identifying and verifying the identity of the customer;
 - (ii) identifying and verifying the identity of the beneficial owner;
 - (iii) obtaining information on the purpose and intended nature of a business relationship; and
 - (iv) establishing, as appropriate, the source of funds and source of wealth of a customer or beneficial owner.
- (b) conducting ongoing monitoring of a business relationship and scrutiny of transactions throughout the course of the relationship to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, the business and risk profile, including where necessary, the customer’s source of funds and source of wealth.

The measures in (a) and (b) above relate to the following circumstances—

- (a) when establishing business relationships,
- (b) carrying out one-off transactions at or above the applicable threshold,
- (c) carrying out wire transfers
- (d) when there is a suspicion of money laundering or terrorist financing, or
- (e) when doubts arise about the veracity or adequacy of previously obtained customer identification data.

“EC” means Eastern Caribbean currency;

“enhanced due diligence” refers to either (a) the extended customer due diligence procedures, where appropriate, that are part of a financial institution’s customer acceptance process or (b) the intensified monitoring of accounts that are appropriate where a customer is or becomes a high risk person, or is or becomes a politically exposed person or is related to such person;

“financial advising” means the giving of advice to customers on their investment needs (includ-

ing long-term savings and pension provision) and selecting the appropriate product;

“**financial institution**” has the same meaning assigned to it in section 2(1) of the Act;

“**high value dealer**” means a person who carries on the activity of dealing in goods of any description by way of business to the extent that the activity involves accepting payment in cash of EC\$30,000 or more (including, in the case of cash payments which are linked, where the total amount of the payments is EC\$30,000 or more);

“**money laundering**” has the meaning assigned to it by section 2(1) of the Act;

“**ONDCP**” means Office of National Drug and Money Laundering Control Policy established under section 3 of the Office of National Drug and Money Laundering Control Policy Act, 2003 No. 11 of 2003;

“**one-off transaction**” means any transaction other than one carried out in the course of an existing business relationship;

“**ongoing due diligence**” refers to the measures described in paragraph (b) of the definition of “customer due diligence”;

“**overseas regulatory authority**” is an authority in a foreign country under a duty to oversee and examine financial institutions or designated non-financial businesses and professions for compliance with procedures for combating money laundering and the financing of terrorism employing standards comparable to those in the Act;

“**PEP**” means politically exposed person;

“**politically exposed person**” means a natural person who is or has been entrusted with prominent public functions or an immediate family member, or a person known to be a close associate of such a person;

“**relevant business**” means the regulated activities set out in the First Schedule to the Act and any amendment thereto;

“**satisfactory evidence of identity**” is evidence which is reasonably capable of establishing (and does in fact establish to the satisfaction of the person who obtains it) that the applicant for business is the person he claims to be;

“**Supervisory Authority**” refers to the person appointed under section 10 of the Act;

“**transaction**” means any transaction (including the opening of an account or a safe deposit facil-

ity) 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.

(2) In these Regulations, references to amounts in EC dollars include references to equivalent amounts in another currency.

PART II

OBLIGATIONS ON PERSONS WHO CARRY ON RELEVANT BUSINESS

3. Systems and training to prevent money laundering

(1) Every person who carries on relevant business in the jurisdiction of Antigua and Barbuda shall—

(a) comply with the requirements of:

(i) regulation 4: Identification Procedures,

(ii) regulation 5: Record Keeping Procedures,

(iii) regulation 6: Internal Reporting Procedures;

(b) establish such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering and

(c) take appropriate measures so that employees are—

(i) made aware of the provisions of these Regulations and of sections 3, 4, 5, 6, 7, 8, 11, 11A, 12, 12A, 12B, 13 and 18 of the Act and the definition of money laundering and money laundering offence under section 2(1) of the Act.

(ii) given training in how to recognize and deal with transactions or activities which may be related to money laundering or the financing of terrorism.

(iii) competent for the work they do, remain competent, appropriately supervised, and have their competence regularly reviewed.

(2) A person who contravenes this regulation commits an offence and liable on conviction to imprisonment for a term of two years or a fine not exceeding EC\$20,000 or both;

(3) In deciding whether a person has committed an offence under this regulation, the court shall consider whether that person followed any relevant guidance which at the time concerned was—

- (a) issued by the Supervisory Authority under section 11 of the Act, and which takes primacy in the setting of minimum standards;
- (b) issued by a regulator or
- (c) issued by any other appropriate body;

(4) An “appropriate body” for purposes of this regulation is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(5) In proceedings against any person for an offence under this regulation, it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence, having regard to the nature of his functions in that capacity and in all the circumstances.

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

(7) Where an offence under the provisions of regulation 3 is committed by a body whether of persons, corporate or unincorporate, every person who, at the time of the commission of the offence acted in an official capacity for or on behalf of the body of persons in respect of that offence whether as a director, manager, secretary or other similar officer or was purporting to act in such capacity, commits that offence and shall be tried under regulation 3.

4. Identification procedures

(1) In this regulation and in regulations 5 to 7

- (a) “A” means a person who carries on relevant business; and
- (b) “B” means an applicant for business.

(2) This regulation applies if—

- (a) A and B form or agree to form a business relationship;
- (b) in respect of any one-off transaction —
 - (i) A knows or suspects that the transaction involves money laundering or the financing of terrorism, regardless of any thresholds or exemptions stated in the law; or
 - (ii) payment of EC\$25,000 or more is to be made by A to B; or B to A; or

- (iii) A sends or receives a wire transfer for or on behalf of B.
 - (c) in respect of two or more one-off transactions, it appears to A (whether at the outset or subsequently) that the transactions are linked and involve, in total, the payment of EC\$25,000 or more by A to B or by B to A.
- (3) A must maintain identification procedures which—
- (a) require that as soon as is reasonably practicable after contact is first made between A and B—
 - (i) B must produce satisfactory evidence of his identity; or
 - (ii) those measures specified in the procedures shall be taken in order to produce satisfactory evidence of B's identity;
 - (iii) B's identity shall be verified using reliable, independent source documents, data or information.
 - (b) take into account the greater potential for money laundering which arises when B is not physically present when being identified;
 - (c) require that where satisfactory evidence of identity is not obtained, the business relationship or one-off transaction must not proceed any further, or shall proceed only in accordance with any direction of the Supervisory Authority;
 - (d) require that where B is or becomes a high risk customer or politically exposed person enhanced due diligence procedures must be taken.
 - (e) require that where B acts or appears to act for another person, reasonable measures must be taken for the purpose of establishing the identity of that person.
 - (f) require that where B acts in a professional capacity as attorney, notary public, chartered accountant, certified public accountant, auditor or nominee of a company on behalf of another person, reasonable measures must be taken for the purpose of establishing the identity of that person on whose behalf B acts.
 - (g) require that where B purports to act for another person which is a legal person or trust, verification must be obtained of B's authorisation to so act.
 - (h) require that where B is a legal person or trust, those measures specified in the procedures must be taken to determine who are the natural persons that ultimately own or control B.

- (i) require that where B is a business, reasonable measures must be taken sufficient to establish the purpose and intended nature of the business.
- (j) require that reasonable measures be taken sufficient to establish the source of funds and the source of wealth of B or the person on whose behalf B acts.
- (k) require that when doubts arise about the veracity or adequacy of previously obtained identification data, then the identification process must be carried out again.
- (l) require the conducting of ongoing due diligence.

(4) (a) Where B:

- (i) makes a payment to A through the post or by any electronic means, or
- (ii) sends details of payment to A by post or any electronic means,

then the fact that the payment is debited from an account held in the applicant's name at a bank shall be capable of constituting the evidence of identity required under this regulation.

(b) Subregulation (4) (a) shall not apply

- (i) Where there is suspicion of money laundering or terrorist financing or,
- (ii) in relation to the opening of an account.

(5) Where B acts or appears to act for another person, it is reasonable for A to accept a written assurance from B that evidence of that person's identity has been recorded under procedures maintained by B, but only if there are reasonable grounds for A to believe that B—

- (a) is regulated by a local or overseas regulatory authority; and
- (b) if regulated by overseas authority is based or incorporated in a country whose laws contain provisions of a similar or higher standard of those contained in the Act. The acceptance by A of such written assurances is not a delegation of liability for customer due diligence.

(6) The requirements set out in this regulation are part of customer due diligence.

5. Record-keeping procedures

- (1) A must maintain procedures which require the retention of the records prescribed in paragraph (2) for the period prescribed in the Act.

(2) The records are—

- (a) where evidence of identity has been obtained under the procedures stipulated by regulation 4 (identification procedures) or pursuant to regulation 7 (casinos)—
 - (i) a copy of that evidence;
 - (ii) information as to where a copy of that evidence may be obtained; or
 - (iii) information enabling the evidence of identity to be re-obtained, but only where it is not reasonably practicable for A to comply with sub-paragraph (i) or (ii); and
- (b) where A carries on relevant business (other than operating a casino by way of business), a record containing details relating to all transactions carried out by the business person in the course of relevant business;
- (c) where A carries on relevant business of operating a casino by way of business, a record containing details relating to any transaction carried out by A in the course of that business involving the payment of US\$3,000. or more; or its equivalent in Eastern Caribbean currency; save that in circumstances where there is a suspicion of money laundering or the financing of terrorism, the records shall contain details relating to the transaction regardless of the amount involved.

(3) Where A is an appointed representative, his principal must ensure that A complies with this regulation in respect of any financial business carried out by A for which the principal has accepted responsibility.

(4) Where the principal fails to do so, he is to be treated as having contravened regulation 3 and he, as well as A, commits an offence.

6. Internal reporting procedures

(1) A must maintain internal reporting procedures which require that—

- (a) someone in A's organisation is designated as the money laundering compliance officer.
- (b) anyone in A's organisation handling relevant business who knows, suspects, or has reasonable grounds to suspect that a transaction involves money laundering or the financing of terrorism must report the matter to the compliance officer.
- (c) the compliance officer, must consider the report in the light of any relevant information which is available to A and determine whether it gives rise to such knowledge or suspicion; and

(d) where the compliance officer does so determine, the matter must be reported to the Supervisory Authority pursuant to section 13 of the Act.

(2) Subregulation (1) does not apply where A is an individual who neither employs nor acts in association with any other person.

(3) Subregulation (1)(b) does not apply where A is a professional legal adviser and the knowledge or suspicion is based on information or other matter which came to him in privileged circumstances.

(4) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client;

(b) by (or by a representative of) a person seeking legal advice from the adviser; or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(5) Subregulations (3) and (4) do not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.

7. Casinos

(1) Where A carries on relevant business of a casino, he must obtain satisfactory evidence of identity of any person before allowing that person to use the casino's gaming facilities.

(2) Where A fails to do so, he is to be treated as having contravened regulation 3.

8. Use of disclosed information

(1) Any information disclosed under these regulations shall be used only in connection with investigations of money laundering and terrorist financing activities.

(2) Names and personal details of the employees of a financial institution that make a suspicious activity or transaction report to the Supervisory Authority are to be kept confidential by the Supervisory Authority and members of the ONDCP.

PART III

PRESCRIBED FORMS FOR PURPOSES OF SECTION 18 OF THE ACT

9. Form for reporting by person transferring currency

(1) A report under section 18(1) of the Act made by a person of the transfer by him personally of currency of not less than US \$10,000 in value into or out of Antigua and Barbuda shall be made in Form 1 in Schedule 1.

(2) The form shall be given by that person to the customs officer assigned for duty at the point of entry or departure.

10. Form for reporting by person transferring currency by consigning it to another

“Any person who pursuant to —

(a) section 18(1) of the Act, consigns currency of an amount of US\$10,000.00 or more through the post or to another person for transfer out of Antigua and Barbuda; or

(b) section 18(2) of the Act receives currency of an amount of US\$10,000.00 or more.

shall be made a report to the Supervisory Authority by completing Form 2 in Schedule I”

11. Reportable details under section 18C

(1) For the purposes of section 18C of the Act, the reportable details are the details for which provision is made to be reported in the forms specified in the Schedule.

12. Further details in respect of inaccurate report

(1) Upon discovery that a section 18 report is not fully or accurately completed or upon discovery of a failure to make such a report, a customs officer, police officer or an officer of the ONDCP may, as deemed appropriate, require that the report be corrected or filled out and may request further information from the person transporting, transferring or receiving the currency regarding the origin and intended use of the currency.

(2) A person who, on being requested to provide further information by a customs officer, police officer or an officer of the ONDCP, refuses or fails to provide information, or who provides false information commits an offence and is liable on summary conviction to a fine not exceeding EC\$5,000.00, in addition to any other sanction provided by law.

13. Penalty for disclosure of information

A person who discloses any of the contents of a report made under section 18 of the Act, or any information obtained under regulation 5(1), without lawful authority commits an offence and is liable on summary conviction to a fine not exceeding EC\$5,000.00.

PART IV**MISCELLANEOUS****14. Regulators etc. to report evidence of money laundering**

Where a regulator or examiner of a financial institution, in the light of any information obtained by him, knows or suspects that someone has or may have been engaged in money laundering, the regulator must disclose the information to the Supervisory Authority as soon as is reasonably practicable. However, such disclosure does not exempt or discharge the financial institution of its obligations to make a report under section 13 of the Act.

15. Annual Review and Audit Report

(1) Every financial institution must review annually its system and procedures for combating money laundering and the financing of terrorism, even where there is unlikely to be a need to effect changes. A written record of this review must be kept for regulators and the Supervisory Authority.

(2) Financial institutions listed in Schedule II must annually instruct their internal and external auditors to review their AML/CFT system and submit to the Supervisory Authority each year by 30 September, an Annual Audit Report of the system.

16. Revocation

(1) The following Regulations are revoked—

- (a) The Money Laundering (Prevention) Regulations SI No. 35 of 1999; and
- (b) The Money Laundering (Prevention) Regulations SI No. 38 of 2000.

SCHEDULE I

(Regulations 9 and 10)

FORM 1**Section 18 (1) of the Money Laundering (Prevention) Act 1996**

Complete this form and give to a:

Transferring Cash or negotiable

CUSTOMS OFFICER at an
ANTIGUA and BARBUDA
SEA PORT/AIRPORT/POINT OF ENTRY

financial instruments into or out of
Antigua and Barbuda

This form should be completed by a person who transfers on arrival or departure or carries Eastern Caribbean and/or foreign currency in cash or negotiable instruments into or out of Antigua and Barbuda and the currency involved is of a total value of **US\$10,000. or more or its equivalent in other currency.**

Negotiable instruments include travellers cheques and other monetary instruments. Reporting of transfers of cash or negotiable financial instruments valued at US\$10,000. or more, or equivalent in other currency into or out of Antigua and Barbuda is required by law under Section 18 of the Money Laundering (Prevention) Act 1996 as amended.

The Money Laundering (Prevention) Act 1996

The Money Laundering (Prevention) Act [No. 9 of 1996] as amended assists in the detection of serious criminal activity, including money laundering from drug trafficking and organised crime.

Penalties

There are penalties for failure to make a report to a customs officer assigned for duty at the point of arrival or departure or to supply full and correct information. The penalties include:

- imprisonment for a period not exceeding two years; and/or
- a fine of up to EC\$50,000.00; and
- the confiscation of the cash or negotiable instruments being transported.

Further information or assistance

The office of the Supervisory Authority is at the Headquarters of the Office of National

Drug and Money Laundering Control Policy (ONDCP). Staff of the ONDCP financial intelligence unit can assist with any inquiries. Telephone (268) 562-3265 or (268) 562-3255

CUSTOMS USE ONLY

Verified (name, DOB, Passport) Yes No
Verified currency Yes No

Officer
Port
Customs Report No.
Date

SUPERVISORY AUTHORITY USE ONLY

ONDCP Report No.

PLEASE PRINT

PART A

1. Are you carrying or transferring currency valued at US\$10,000 or more United States dollars INTO Antigua and Barbuda
OUT OF Antigua and Barbuda

4. Permanent address in home country

<input type="text"/>	
City	<input type="text"/>
State	Postal code
Country	<input type="text"/>

PART B Details of the person carrying or transferring the currency into or out of Antigua and Barbuda

2. Given Names
Surname

5. Are you a resident of Antigua and Barbuda?
Yes No

3. Date of Birth
Day Month Year

6. Address while in Antigua and Barbuda?

City/Town

7. Occupation or business activity

8. Number of valid passports held by you?

9. Details of passports
 PASSPORT NO. COUNTRY OF ISSUE

10. Port of arrival or departure

--

11. Date of arrival or departure

--

16. If so, state the person's name and address

--

17. How much currency is the person carrying?

--

18. Are you carrying or transferring the currency: wholly or partly on behalf of another person, business or organisation

PART C Details of currency being carried or transferred

- Fill out Part D and E
 Go straight to PART E
- or wholly on your own behalf?

12.

	Country of Issue	Amount of EC or foreign	approximate US rate of exchange	Value in US dollars
A	Eastern Caribbean			
B	United States			
C				
D				
Total sum in U.S \$ = (add lines A, B, C and D)				

PART D (a) Details of the person, business or organisation on whose behalf currency is being transferred

19. Give name of person or or organisation

--

13. What city and country is the currency being imported from or taken to?

City/Town
Country

20. Address

City
State Postal code
Country

14. Are you travelling in a group? Yes No

15. Is any member of the group transporting currency on your behalf not accounted for in item 12 above? Yes No

21. Occupation or business activity

(b) **Details of the person, business or organisation to whom currency is being transferred**

22. Give name of person or organisation.

23. Address

City	
State	Postal code
Country	

24. Occupation or business activity

PART E Declaration and Signature

I declare that the above information is correct.

Date:

	/	
DAY	MONTH	YEAR

Signature

FORM II

Section 18 (1) and 18 (2) of the Money Laundering (Prevention) Act 1996

Complete this form and deliver to:

SUPERVISORY AUTHORITY ONDCP Headquarters Camp Blizzard, Antigua

Telephone number: 269 562-3255 Fax number: 268 460-8818

This form should be completed by a person who transfers by consigning to a postal service, courier or other third party, Eastern Caribbean currency and/or foreign currency to be taken into or out of Antigua and Barbuda and the currency involved is of a total value of **US\$10,000 or more or its equivalent in other currency.**

“Currency” means cash or bearer negotiable Instruments.

Reporting of transfers of currency valued at US\$10,000 or more, or the equivalent in other currency into or out of Antigua and Barbuda is required by law under Section 18 of the Money Laundering (Prevention) Act 1996 as amended.

Currency not reported according to sections 18(1), (2) and (6) of The Money Laundering (Prevention) Act [No.9 of 1996] as amended may be seized by law enforcement Officers.

The Money Laundering (Prevention) Act 1996 The Money Laundering (Prevention) Act [No.9 of 1996] as amended makes provisions under section 18 for currency reporting in order to assist law enforcement in the detection of serious criminal activity , including money laundering, drug, trafficking and organised crime.

USE of the information reported Reports received by the Supervisory Authority under the Money Laundering (Prevention) Act 1996 are processed by the financial intelligence unit of the ONDCP. The information reported is confidential.

Penalties

There are penalties for failure to lodge a report with Comptroller of Customs or a customs officer assigned for duty at the point of mailing/ shipping or receiving currency or failure to supply full and correct information. The penalties include:

- imprisonment for a period not exceeding two years; and/or
- a fine of up to EC\$50,000.00; and
- the confiscation of the cash or negotiable instruments being transported.

Further information or assistance

The Supervisory Authority's office is located at the Headquarters of the Office of National Drug and Money Laundering Control Policy (ONDCP), Camp Blizzard, St. Georges, Antigua. ONDCP Staff will be ready to assist with any enquires Telephone (268) 562-3265.

MAILING or TRANSFER by a third party of currency out of Antigua and Barbuda or Receipt of currency mailed or transferred by a third party into Antigua and Barbuda

PLEASE PRINT

PART A

1. Report of currency valued at or US\$10,000 or more:

MAILED or CONSIGNED to someone else for **TRANSFER** out of Antigua and Barbuda

RECEIVED from courier or consignee on **TRANSFER** into Antigua and Barbuda

3. Address

City
State Postal code
Country

4. Occupation or nature of business

PART B Details of person or organisation sending or receiving currency

2. Give name of person or organisation

PART C Details of person or organisation to whom currency is being sent or from whom currency is being received

5. Give name of person or the organisation

6. Address

City	
State	Postal code
Country	

7. Occupation or nature of business

8. Is the transfer or receipt of the currency:
 Wholly or partly on behalf of another person, business or organisation
 GO TO Part D
 Wholly on your own behalf
 Go straight to PART E

PART D Details of person or organisation on whose behalf the currency is being transferred

9. Give name of person, business or Organisation

10. Address

City	
State	Postal code
Country	

11. Occupation or nature of business

PART E Details of currency being transferred by consignment

12.

	Country of Issue	Amount of EC or foreign currency	Approximate US rate of exchange	Value in US dollars
A	Eastern Caribbean			
B	United States			
C				
D				
Total sum in U.S \$ = (add lines A, B, C and D)				

If you are sending currency, go to Part F
 If you are receiving currency, go straight to Part G

PART F Details of courier taking currency out of country

13. To whom has the currency been considered for transfer out of Antigua and Barbuda?
 Name of courier or consignee

14. Address of courier or consignee

City	
State	Postal code
Country	

15. Date of delivery of currency to post, courier or consignee

/ /
DAY MONTH YEAR

Signature

PART G **Details of courier bringing currency into country**

16. From whom has the currency been received in Antigua and Barbuda?

Name and courier or consignee

17. Address of courier or consignee

City	
State	Postal code
Country	

18. Date of receipt of currency from post, courier or consignee

/ /
DAY MONTH YEAR

OFFICIAL USE ONLY

Customs Report No.

ONDCP Report No.

PART H **Declaration and Signature**

I declare that the above information is correct

/ /
DAY MONTH YEAR

SCHEDULE II

(Regulation 15)

Financial Institutions are required to submit an Annual AML/CFT Audit Report to the Supervisory Authority where they engage in the following financial activities:—

Banking business

International offshore banking business

Insurance business

Internet gambling

Sports betting

Casinos

Money Services Business (Money changers and money transmitters).

Made the 22nd day of May, 2007.

Justin L. Simon, Q.C.,
Attorney General and
Minister responsible for
Legal Affairs.