

**M O N T S E R R A T**

**STATUTORY RULES AND ORDERS**

**NO. 27 OF 2010**

**ANTI-MONEY LAUNDERING AND  
TERRORIST FINANCING REGULATIONS, 2010**

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**M O N T S E R R A T**  
**STATUTORY RULES AND ORDERS**  
**NO. 27 OF 2010**

**THE PROCEEDS OF CRIME ACT, 2010**

**ANTI-MONEY LAUNDERING AND**  
**TERRORIST FINANCING REGULATIONS 2010**

REGULATIONS MADE BY THE GOVERNOR IN COUNCIL UNDER SECTION 175 OF THE PROCEEDS OF  
CRIME ACT, 2010.

PART 1

PRELIMINARY

**Citation**

1. These Regulations may be cited as the Anti-money Laundering and Terrorist Financing Regulations, 2010.

**Interpretation**

2. In these Regulations—

“**Act**” means the Proceeds of Crime Act, 2010;

“**bank**” means a person that carries on banking business within the meaning of the Banking Act (Cap. 11.03) or international banking business within the meaning of the International Banking and Trust Companies Act (Cap. 11.04), whether or not that business is carried on in or from within Montserrat;

“**beneficial owner**” has the meaning specified in the Dictionary;

“**branch**” includes a representative or contact office;

“**business relationship**” means a business, professional or commercial relationship between a service provider and a customer which is expected by the service provider, at the time when contact is established, to have an element of duration;

**“cash”** means—

- (a) notes and coins;
- (b) postal orders; or
- (c) travellers’ cheques;

in any currency;

**“Code”** means a Code issued by the Commission under section 176 of the Act, and in relation to a service provider, means a Code that applies to the service provider;

**“Commission”** means the Financial Services Commission established under the Financial Services Commission Act (Cap. 11.02) and preserved and continued under the Financial Services Commission Act, 2008;

**“correspondent banking relationship”** has the meaning specified in the Dictionary;

**“customer”** includes a prospective customer;

**“customer due diligence measures”** has the meaning specified in the Dictionary;

**“Dictionary”** means the Dictionary contained in Schedule 1;

**“enhanced customer due diligence measures”** has the meaning specified in the Dictionary;

**“FATF”** means the international body known as the Financial Action Task Force on Money Laundering;

**“FATF Recommendations”** means—

- (a) the Forty Recommendations; and
- (b) the Nine Special Recommendations;

issued by the FATF, incorporating the amendments made on 22 October 2004 and such other amendments as may be made;

**“financial institution”** has the meaning specified in the Financial Services Commission Act, 2008;

**“foreign regulated person”** has the meaning specified in the Dictionary;

**“foreign regulatory authority”**, means an authority in a jurisdiction outside Montserrat which exercises jurisdiction in that supervisory functions substantially corresponding to those of the Commission or the supervisory authority for non-financial service providers, with respect to enforcing compliance with the Act, these Regulations and a Code;

**“high value dealer”** means a person who, trades in goods, including precious metals and precious stones, and receives, in respect of any transaction, a payment or payments in cash of at least \$35,000 or the equivalent in another currency, whether the transaction is executed in a single operation or in several linked operations;

**“identification information”** has the meaning specified in a Code;

**“independent legal professional”** means a firm or sole practitioner who, by way of business, provides legal or notarial services to other persons, when preparing for or carrying out transactions for a customer in relation to—

- (a) the buying and selling of real estate and business entities;
- (b) the managing of client money;
- (c) the opening or management of bank, savings or securities accounts;

(d) the organisation of contributions necessary for the creation, operation or management of companies; or

(e) the creation, operation or management of trusts, companies or similar entities, excluding any activity that requires a trust company licence under the International Banking and Trust Companies Act (Cap. 11.04) or the Company Management Act (Cap. 11.26);

**“intermediary”** means a person who has or seeks to establish a business relationship or to carry out an occasional transaction on behalf of his customer with a service provider, so that the intermediary becomes a customer of the service provider;

**“introducer”** means a person who has a business relationship with a customer and who introduces that customer to a service provider with the intention that the customer will form a business relationship or conduct an occasional transaction with the service provider so that the introducer’s customer also becomes a customer of the service provider;

**“Money Laundering Compliance Officer”** means the person appointed by a service provider as its compliance officer under regulation 16;

**“money laundering disclosure”** means a disclosure under section 121 or 122 of the Act;

**“Money Laundering Reporting Officer”** or **“MLRO”** means the person appointed by a service provider under regulation 17;

**“NFSP Register”** means the register of non-financial service providers established and kept in accordance with regulation 19;

**“NFSP supervisor”** means the supervisory authority for non-financial service providers prescribed in regulation 18;

**“occasional transaction”** has the meaning specified in the Dictionary;

**“ongoing monitoring”** has the meaning specified in the Dictionary;

**“politically exposed person”** has the meaning specified in the Dictionary;

**“recognised exchange”** has the meaning specified in the Dictionary;

**“regulated business”** means a business for which a regulatory licence is required;

**“regulated person”** means a person who holds a regulatory licence;

**“regulatory licence”** has the meaning specified in the Dictionary;

**“relevant business”** means a business which, if carried on by a person, would result in that person being a service provider;

**“service provider”** has the meaning specified in the Dictionary;

**“shell bank”** has the meaning specified in the Dictionary;

**“sole trader”** means an individual carrying on a relevant business who does not in the course of doing so—

(a) employ any other person; or

(b) act in association with any other person;

**“supervisory authority”** means—

(a) in the case of a regulated service provider, the Commission; or

(b) in the case of a non-financial service provider, the NFSP supervisor;

**“Terrorism (UN) Order”** means the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;

**“third party”** means a person for whom a customer is acting.

### **Application of Regulations outside Montserrat**

**3.** (1) For the purposes of this regulation, “relevant service provider” means a service provider—

- (a) that is a regulated person; and
- (b) that is—
  - (i) a company incorporated in Montserrat;
  - (ii) a partnership based in Montserrat;
  - (iii) an individual resident in Montserrat; or
  - (iv) any other person having its principal or head office in Montserrat.

(2) Subject to sub-regulations (3), (4) and (5), a relevant service provider that has a branch located in, or a subsidiary incorporated in, a country outside Montserrat shall, to the extent that the laws of that country permit—

- (a) comply with these Regulations and a Code in respect of any business carried on through the branch; and
- (b) ensure that these Regulations and a Code are complied with by the subsidiary with respect to any business that it carries on.

(3) A relevant service provider shall have particular regard to ensure that sub-regulation (2) is complied with where the country in which its branch or subsidiary is situated does not apply, or insufficiently applies, the FATF Recommendations.

(4) If the country in which a branch or subsidiary of a service provider is situated has more stringent standards with respect to the prevention of money laundering and terrorist financing than are provided for in these Regulations and a Code, the relevant service provider shall ensure that the more stringent requirements are complied with by its branch or subsidiary.

(5) Where the laws of a country outside Montserrat do not permit a branch or subsidiary of a service provider to comply with sub-regulation (2), the relevant service provider shall—

- (a) notify the Commission in writing; and
- (b) to the extent that the laws of the foreign country permit, apply alternative measures to ensure compliance with the FATF Recommendations and to deal effectively with the risk of money laundering and terrorist financing.

### **Prescribed service providers, directions under Part 10 of Act**

**4.** For the purposes of Part 10 of the Act, the following are prescribed service providers—

- (a) regulated service providers;
- (b) service providers falling within paragraph 12(1)(b), (c) or (d) or paragraph 12(2) of Schedule 1.

PART 2  
CUSTOMER DUE DILIGENCE

**Application of customer due diligence measures and ongoing monitoring**

5. (1) Subject to sub-regulations (5) and (6), a service provider shall apply customer due diligence measures—

- (a) before the service provider establishes a business relationship or carries out an occasional transaction;
- (b) where the service provider—
  - (i) suspects money laundering or terrorist financing; or
  - (ii) doubts the veracity or adequacy of documents, data or information previously obtained under its customer due diligence measures or when conducting ongoing monitoring; and
- (c) at other appropriate times to existing customers as determined on a risk-sensitive basis.

(2) Without limiting sub-regulations (1)(b)(ii) and (1)(c), a service provider shall obtain identification information when there is a change in the—

- (a) identification information of a customer;
- (b) beneficial ownership of a customer; or
- (c) third parties, or the beneficial ownership of third parties.

(3) A service provider shall conduct ongoing monitoring of a business relationship.

(4) In applying customer due diligence measures and conducting ongoing monitoring, a service provider shall—

- (a) assess the risk that any business relationship or occasional transaction involves, or will involve, money laundering or terrorist financing, depending upon the type of customer, business relationship, product or transaction;
- (b) be able to demonstrate to the supervisory authority—
  - (i) that the extent of the customer due diligence measures applied in any case is appropriate having regard to the circumstances of the case, including the risks of money laundering and terrorist financing; and
  - (ii) that it has obtained appropriate information to carry out the risk assessment required under paragraph (a).

(5) A service provider may complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship if—

- (a) it is necessary not to interrupt the normal conduct of business;
- (b) there is little risk of money laundering or terrorist financing occurring as a result; and
- (c) verification of identity is completed as soon as reasonably practicable after the contact with the customer is first established.

(6) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that, before verification has been completed—

- (a) the account is not closed; and
- (b) transactions are not carried out by or on behalf of the account holder, including any payment from the account to the account holder.

(7) A service provider that contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$100,000.

### **Requirement to cease transaction or terminate relationship**

6. (1) If a service provider is unable to apply customer due diligence measures before the establishment of a business relationship or before the carrying out of an occasional transaction in accordance with these Regulations, the service provider shall not establish the business relationship or carry out the occasional transaction.

(2) If regulation 5(5) or (6) apply and a service provider is unable to complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship, the service provider shall terminate the business relationship with the customer.

(3) If a service provider is unable to undertake ongoing monitoring with respect to a business relationship, the service provider shall terminate the business relationship.

(4) If sub-regulation (1), (2) or (3) applies with respect to a service provider, the service provider shall consider whether he is required to make a money laundering disclosure or a terrorist financing disclosure.

(5) Sub-regulations (1), (2) and (3) do not apply where the service provider is a independent legal professional and is in the course of ascertaining the legal position for his client or performing the task of defending or representing the client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

(6) If the service provider has made a money laundering or terrorist financing disclosure, sub-regulations (1), (2) and (3) do not apply to the extent that the service provider is acting—

- (a) in the case of a money laundering disclosure, with the consent or deemed consent of the Reporting Authority; or
- (b) in the case of a terrorist financing disclosure made under the Anti-terrorist Financing Order, with the consent of a constable, where such consent may lawfully be given.

(7) A service provider who contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$100,000.

### **Enhanced customer due diligence and ongoing monitoring**

7. (1) A service provider shall, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring—

- (a) where the customer has not been physically present for identification purposes;
- (b) where the service provider has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country that does not apply, or insufficiently applies, the FATF recommendations;
- (c) where the service provider is a bank which holds a banking licence granted under the Banking Act (Cap. 11.03) that has or proposes to have a banking



or similar relationship with an institution whose address for that purpose is outside Montserrat;

- (d) where the service provider has or proposes to have a business relationship with, or to carry out an occasional transaction with, a politically exposed person;
- (e) where any of the following is a politically exposed person—
  - (i) a beneficial owner of the customer;
  - (ii) a third party for whom a customer is acting;
  - (iii) a beneficial owner of a third party described in subparagraph (ii);
  - (iv) a person acting, or purporting to act, on behalf of the customer.
- (f) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

(2) A service provider who contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$100,000.

#### **Reliance on introducers and intermediaries**

**8.** (1) Subject to these Regulations and any requirements in a Code, a service provider may rely on an introducer or an intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner, if—

- (a) the introducer or intermediary is a regulated person or a foreign regulated person; and
- (b) the introducer or intermediary consents to being relied on.

(2) Before relying on an introducer or intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner, a service provider shall obtain adequate assurance in writing from the intermediary or introducer that—

- (a) the intermediary or introducer has applied the customer due diligence measures on which the service provider intends to rely;
- (b) the intermediary or introducer is required to keep, and does keep, a record of the evidence of identification relating to each of the customers of the intermediary or introducer;
- (c) the intermediary or introducer will, without delay, provide the information in that record to the service provider at the service provider's request; and
- (d) the intermediary or introducer will, without delay, provide the information in the record for provision to the Commission, where requested by the Commission.

(3) Where a service provider relies on an introducer or intermediary to apply customer due diligence measures, the service provider remains liable for any failure to apply those measures.

(4) This regulation does not prevent a service provider from applying customer due diligence measures by means of an outsourcing service provider or agent provided that the service provider remains liable for any failure to apply such measures.

### **Simplified due diligence requirements**

**9.** (1) A service provider is not required to apply customer due diligence measures before establishing a business relationship or carrying out an occasional transaction where—

- (a) he has reasonable grounds for believing that the customer is—
  - (i) a regulated person;
  - (ii) a foreign regulated person;
  - (iii) a public authority in Montserrat; or
  - (iv) a body corporate, the securities of which are listed on a recognised exchange.
- (b) in the case of life insurance business, the product is a life insurance contract where the annual premium is no more than \$2,000 or where a single premium of no more than \$5,000 is paid.

(2) Sub-regulation (1)(a) does not apply with respect to any third party for whom the customer may be acting or with respect to the beneficial owners of such a third party.

(3) Sub-regulation (1) does not apply if—

- (a) the service provider suspects money laundering or terrorist financing; or
- (b) the customer is located, or resides, in a country that does not apply, or insufficiently applies, the FATF recommendations.

### **Shell banks**

**10.** (1) A bank—

- (a) shall not enter into or continue a correspondent banking relationship with a shell bank; and
- (b) shall take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship with a bank that is known to permit its accounts to be used by a shell bank.

(2) A bank that contravenes sub-regulation (1) commits an offence and is liable on summary conviction, to a fine not exceeding \$100,000.

### **Anonymous and numbered accounts**

**11.** (1) A service provider shall not set up or maintain a numbered account, an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious.

(2) A service provider that contravenes sub-regulation (1) commits an offence and is liable on summary conviction, to a fine not exceeding \$100,000.

## **PART 3**

### **POLICIES, SYSTEMS AND CONTROLS, RECORD KEEPING AND TRAINING**

#### **Policies, systems and controls to prevent and detect money laundering and terrorist financing**

**12.** (1) For the purposes of this regulation—

- (a) “scrutiny” includes scrutinising the background and purpose of transactions and activities;
- (b) “transaction” means any of the following—
  - (i) an occasional transaction;
  - (ii) a transaction within an occasional transaction; or
  - (iii) a transaction undertaken within a business relationship.

(2) Subject to sub-regulation (6), a service provider shall establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls relating to—

- (a) customer due diligence measures and ongoing monitoring;
- (b) the reporting of disclosures;
- (c) record-keeping;
- (d) the screening of employees;
- (e) internal controls;
- (f) risk assessment and management; and
- (g) the monitoring and management of compliance with, and the internal communication of, its policies, systems and controls to prevent and detect money laundering and terrorist financing, including those specified in paragraphs (a) to (f).

(3) The policies, systems and controls referred to in sub-regulation (2) must include policies, systems and controls which provide for—

- (a) the identification and scrutiny of—
  - (i) complex or unusually large transactions;
  - (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
  - (iii) any other activity which the service provider regards as particularly likely, by its nature, to be related to the risk of money laundering or terrorist financing;
- (b) the taking of additional measures, where appropriate, to prevent the use of products and transactions which are susceptible to anonymity for money laundering or terrorist financing; and
- (c) determining whether—
  - (i) a customer, any third party for whom the customer is acting and any beneficial owner of the customer or third party, is a politically exposed person;
  - (ii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country that does not apply, or insufficiently applies, the FATF Recommendations; or
  - (iii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country that is subject to measures for purposes connected with the prevention and detection

of money laundering or terrorist financing, imposed by one or more countries or sanctioned by the European Union or the United Nations.

(4) A service provider with any subsidiary or branch that carries on a relevant business shall communicate to that subsidiary or branch, whether in or outside Montserrat, the service provider's policies and procedures maintained in accordance with this regulation.

(5) A service provider shall maintain adequate procedures for monitoring and testing the effectiveness of—

- (a) the policies and procedures maintained under this regulation; and
- (b) the training provided under regulation 15.

(6) A sole trader is not required to maintain policies and procedures relating to internal reporting, screening of employees and the internal communication of such policies and procedures.

(7) A service provider who contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

### **Records required to be kept**

**13.** (1) Subject to sub-regulation (4), a service provider shall keep the records specified in sub-regulation (2) and such additional records as may be specified in a Code—

- (a) in a form that enables them to be made available on a timely basis, when lawfully required, to the Commission or law enforcement authorities in Montserrat; and
- (b) for at least the period specified in regulation 14.

(2) For the purpose of sub-regulation (1) the records a service provider shall keep are—

- (a) a copy of the evidence of identity obtained pursuant to the application of customer due diligence measures or ongoing monitoring, or information that enables a copy of such evidence to be obtained;
- (b) the supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring;
- (c) a record containing details relating to each transaction carried out by the service provider in the course of any business relationship or occasional transaction;
- (d) all account files; and
- (e) all business correspondence relating to a business relationship or an occasional transaction.

(3) The record to which sub-regulation (2)(c) refers must include sufficient information to enable the reconstruction of individual transactions.

(4) A service provider who is relied on by another person in accordance with these regulations shall keep the records specified in sub-regulation (2)(a) for the period of five years beginning on the date on which he is relied on in relation to any business relationship or occasional transaction.

(5) Where a service provider (the “first service provider”) is an introducer or intermediary and has given the assurance that is required under regulation 8(2) to another service provider (the “second service provider”), the first service provider shall make available to the second service provider, at the second service provider’s request, a copy of the evidence of identification that the first service provider is required to keep under this regulation, such evidence being the evidence that is referred to in regulation 8(2).

(6) Sub-regulations (4) and (5) do not apply where a service provider applies customer due diligence measures by means of an outsourcing service provider or agent.

(7) For the purposes of this regulation, a service provider relies on another service provider where he does so in accordance with regulation 8.

(8) A service provider who contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

### **Period for which records must be kept**

**14.** (1) Subject to sub-regulation (2), the period specified for the purposes of regulation 13 is 5 years beginning on—

- (a) in the case of the records specified in regulation 13(2)(a), the date on which—
  - (i) the occasional transaction is completed; or
  - (ii) the business relationship ends; or
- (b) in the case of the records specified in sub-regulation 13(2)(b)—
  - (i) where the records relate to a particular transaction, the date on which the transaction is completed;
  - (ii) for all other records, the date on which the business relationship ends.

(2) The Commission or the Reporting Authority may, by written notice, specify a period longer than 5 years for the purposes of regulation 13, and such longer period as is specified in the notice shall apply instead of the period of 5 years specified in sub-regulation (1).

### **Training**

**15.** (1) A service provider shall take appropriate measures for the purposes of making employees whose duties relate to the provision of relevant business aware of—

- (a) the anti-money laundering and counter-terrorist financing policies, procedures, systems and controls maintained by the service provider in accordance with these Regulations or a Code;
- (b) the law of Montserrat relating to money laundering and terrorist financing offences; and
- (c) these Regulations, a Code and any guidance issued by the Commission.

(2) A service provider shall provide employees specified in sub-regulation (1) with training in the recognition and handling of—

- (a) transactions carried out by or on behalf of any person who is or appears to be engaged in money laundering or terrorist financing; and
- (b) other conduct that indicates that a person is or appears to be engaged in money laundering or terrorist financing.

(3) For the purposes of sub-regulation (2), training shall include the provision of information on current money laundering techniques, methods, trends and typologies.

(4) A service provider who contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

## PART 4

### COMPLIANCE AND DISCLOSURES

#### **Money Laundering Compliance Officer**

**16.** (1) Subject to sub-regulation (8), a service provider, other than a sole trader, shall appoint an individual approved by the supervisory authority as its money laundering compliance officer in respect of the relevant business being carried on by the service provider.

(2) A sole trader is the money laundering compliance officer in respect of his or her relevant business.

(3) A service provider shall ensure that—

- (a) the individual appointed as money laundering compliance officer under this regulation is of an appropriate level of seniority; and
- (b) the compliance officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as money laundering compliance officer.

(4) The principle function of the money laundering compliance officer is to oversee and monitor the service provider's compliance with the Act, all legislation in force concerning terrorist financing, these Regulations and a Code.

(5) When an individual has ceased to be the money laundering compliance officer of a service provider, the service provider shall as soon as practicable appoint another individual approved by the supervisory authority as its money laundering compliance officer.

(6) A service provider shall give the Commission written notice within 7 days after the date—

- (a) of the appointment of a money laundering compliance officer; or
- (b) that an individual ceases, for whatever reason, to be its money laundering compliance officer.

(7) The money laundering compliance officer of a service provider may also be appointed to be its money laundering reporting officer.

(8) A Code may modify the requirements of this regulation in relation to particular types or category of service provider.

(9) A service provider who contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

#### **Money Laundering Reporting Officer**

**17.** (1) Subject to sub-regulation (6), a service provider, other than a sole trader, shall appoint an individual as its money laundering reporting officer to—

- (a) receive and consider internal money laundering and terrorist financing disclosures;
  - (b) considering whether a suspicious activity report should be made to the Reporting Authority; and
  - (c) where he considers a suspicious activity report should be made, submitting the report.
- (2) A service provider shall ensure that—
- (a) the individual appointed as money laundering reporting officer under this regulation is of an appropriate level of seniority; and
  - (b) the money laundering reporting officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions.
- (3) When an individual has ceased to be the money laundering reporting officer of a service provider, the service provider shall as soon as practicable appoint another individual approved by the supervisory authority as its money laundering reporting officer.
- (4) A service provider shall give the Commission written notice within 7 days after the date—
- (a) of the appointment of a money laundering reporting officer; or
  - (b) that an individual ceases, for whatever reason, to be its money laundering reporting officer.
- (5) The money laundering reporting officer of a service provider may also be appointed to be its money laundering compliance officer.
- (6) A Code may modify the requirements of this regulation in relation to particular types or category of service provider.
- (7) A service provider who contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

## PART 5

### NON-FINANCIAL SERVICE PROVIDERS

#### **Prescribed supervisory authority**

**18.** For the purposes of section 155(2) of the Act, the Commission is prescribed as the sole supervisory authority for non-financial service providers.

#### **Register of non-financial service providers**

**19.** (1) The NFSP supervisor must establish and keep a register of non-financial service providers.

(2) The NFSP Register shall contain the following information in respect of each non-financial service provider that has been registered in accordance with regulation 20—

- (a) the name, address in Montserrat and contact details of the non-financial service provider;

- (b) the relevant business for which the non-financial service provider is registered;
- (c) the date of registration and, if applicable, de-registration of the non-financial service provider;
- (d) such other information as the NFSP supervisor considers appropriate.

(3) The NFSP Register and the information contained in any document filed with the NFSP supervisor may be kept in such manner as the NFSP supervisor considers appropriate, including either wholly or partly, by means of a device or facility that—

- (a) records or stores information magnetically, electronically or by other means; and
- (b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

### **Application to register**

**20.** (1) A person may apply to the NFSP supervisor to be registered as a non-financial service provider in the NFSP Register.

- (2) The application must—
  - (a) be in writing and in the form specified by the NFSP supervisor;
  - (b) be signed by the applicant or by a person acting on the applicant's behalf;
  - (c) be accompanied by such documents or information as may be specified on the application form or by the NFSP supervisor.
- (3) The NFSP supervisor may require an applicant to—
  - (a) provide it with such documents and information, in addition to those specified in sub-regulation (2), as it reasonably requires to determine the application and any such information shall be in such form as the NFSP supervisor may require; and
  - (b) verify any document and information provided in support of an application in such manner as the NFSP supervisor may specify.
- (4) If, before the determination by the NFSP supervisor of an application—
  - (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the NFSP supervisor in connection with the application; or
  - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading;

the applicant shall give the NFSP supervisor as soon as possible written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

### **Registration**

**21.** (1) Following the receipt of an application under regulation 20 and any additional documents or information that it has required under regulation 20(3), the NFSP supervisor must either—

- (a) register the applicant as a non-financial service provider in the NFSP Register; or
- (b) refuse the application under regulation 22.



(2) If the NFSP Supervisor registers the applicant, it must provide it with written notice of its registration.

### **Refusal of application**

**22.** (1) The NFSP supervisor may refuse an application for registration if—

- (a) the application does not comply with regulation 20;
- (b) the applicant fails to provide any information or documents required by the NFSP supervisor under regulation 20(3); or
- (c) the NFSP supervisor is of the opinion that—
  - (i) the applicant does not intend to carry on the relevant business for which it seeks registration;
  - (ii) the non-financial service provider, or any of its directors, senior officers or owners do not satisfy the NFSP supervisor's fit and proper criteria; or
  - (iii) it is contrary to the public interest for the non-financial service provider to be registered.

(2) If the NFSP supervisor refuses an application for registration, it must send the applicant a written notice of refusal, stating the grounds for its refusal.

## **PART 6**

### **MISCELLANEOUS**

#### **Customer information**

**23.** (1) For the purposes section 140 of the Act, "customer information", in relation to a person ("the specified person") and a regulated person, is information whether the specified person holds, or has held, an account or accounts at the regulated person, whether solely or jointly with another, and, if so, information as to—

- (a) the account number or numbers;
- (b) the specified person's full name;
- (c) where the specified person is an individual, the individual's—
  - (i) date of birth; and
  - (ii) most recent address, any previous address, any postal address and any previous postal address;
- (d) where the specified person is a company—
  - (i) the country where the company is incorporated or is otherwise constituted, established or registered;
  - (ii) the address of the registered office, any previous registered office, any business address, any previous business address, any postal address and any previous postal address;
- (e) where the specified person is a partnership or unincorporated body of persons, the information specified in paragraph (c) with respect to each individual authorised to operate the account, whether solely or jointly;

- (f) such evidence of identity with respect to the specified person as has been obtained by the regulated person;
- (g) the date or dates on which the specified person began to hold the account or accounts and, if the specified person has ceased to hold the account or any of the accounts, the date or dates on which the person did so;
- (h) the full name of any person who holds, or has held, an account at the financial institution jointly with the specified person;
- (i) the account number or numbers of any other account or accounts held at the financial institution to which the specified person is a signatory and details of the person holding the other account or accounts;
- (j) the full name and the information contained in paragraph (c), (d) or (e), as relevant, of any person who is a signatory to an account specified in paragraph (i).

### **Prescribed amounts**

**24.** The following amounts are prescribed for the purposes of the Act—

- (a) application of section 32(1) of the Act (minimum amount remaining to be paid under a confiscation order for discharge), the amount prescribed is \$1,000;
- (b) discharge under section 33 of the Act, the amount prescribed is \$100;
- (c) minimum threshold for the purposes of section 96(1) of the Act, the amount prescribed is \$3,000;
- (d) definition of “recoverable cash” under section 99 of the Act, the amount prescribed is \$500.

### **Disciplinary action**

**25.** (1) For the purposes of section 42 of the Financial Services Commission Act, 2008—

- (a) a financial institution that contravenes a provision of these Regulations set out in Columns 1 and 2 of the table in Schedule 2, commits a disciplinary violation; and
- (b) the amount specified in Column 3 of the table in Schedule 2 with respect to a disciplinary violation, is the maximum administrative penalty that the Commission may impose on a financial institution for that disciplinary violation.

(2) For the purposes of sections 162 and 162A of the Act—

- (a) a regulated person, that is not a financial institution, who contravenes a provision of these Regulations set out in Columns 1 and 2 of the table in Schedule 3, commits a disciplinary violation; and
- (b) the amount specified in Column 3 of the table in Schedule 3 with respect to a disciplinary violation, is the maximum administrative penalty that the Commission may impose on a regulated person, other than a financial institution, for that disciplinary violation.

(3) For the purposes of sections 162 and 162A of the Act—

- (a) a non-financial service provider who contravenes a provision of these Regulations set out in Columns 1 and 2 of the table in Schedule 4, commits a disciplinary violation; and
- (b) the amount specified in Column 3 of the table in Schedule 4 with respect to a disciplinary violation, is the maximum administrative penalty that the NFSP supervisor may impose on a non-financial service provider for that disciplinary violation.

### **Transitional provisions**

- 26.** (1) For the purpose of this regulation, a person is a specified service provider if—
- (a) the person is, on the commencement of these Regulations, a service provider within the meaning of Schedule 2;
  - (b) the person was not, immediately before the commencement of these Regulations, a regulated person within the meaning of the Anti-money Laundering Regulations S.R.O. 63/2005.
- (2) These Regulations apply to specified service providers as follows—
- (a) regulations 12 and 15 apply with effect from two months after these Regulations come into force
  - (b) the remaining provisions of these Regulations apply with effect from the date that the Regulations come into force.

### **Revocation**

- 27.** The following are revoked—
- (a) the Anti-money Laundering Regulations S.R.O. 63/2005; and
  - (b) the Code of Practice on the Prevention of Money Laundering and Financing of Terrorism made by the Governor-in-Council on 7 February 2008.

**SCHEDULE 1***(Regulations 2)***DICTIONARY****Beneficial owner**

**1.** (1) Subject to subparagraph (3), each of the following is a beneficial owner of a legal person, a partnership or an arrangement—

- (a) an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner; and
- (b) an individual who exercises ultimate control over the management of the legal person, partnership or arrangement, whether alone or jointly with any other person or persons.

(2) For the purposes of subparagraph (3), it is immaterial whether an individual's ultimate ownership or control of a legal person, partnership or arrangement is direct or indirect.

(3) An individual is deemed not to be the beneficial owner of a body corporate, the securities of which are listed on a recognised exchange.

(4) In this paragraph, an "arrangement" includes a trust.

**Correspondent banking**

**2.** (1) "Correspondent banking" means the provision of banking services by one bank, (the "correspondent bank") to another bank (the "respondent bank").

(2) Without limiting subparagraph (1), "banking services" includes—

- (a) cash management, including establishing interest-bearing accounts in different currencies;
- (b) international wire transfers of funds;
- (c) cheque clearing;
- (d) payable-through accounts; and
- (e) foreign exchange services.

**Customer due diligence measures**

**3.** (1) "Customer due diligence measures" are measures for—

- (a) identifying a customer;
- (b) determining whether the customer is acting for a third party and, if so, identifying the third party;
- (c) verifying the identity of the customer and any third party for whom the customer is acting;
- (d) identifying the identity of each beneficial owner of the customer and third party, where either the customer or third party, or both, are not individuals;

- (e) taking reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of the customer and third party so that the service provider is satisfied that it knows who each beneficial owner is including, in the case of a legal person, partnership, trust or similar arrangement, taking reasonable measures to understand the ownership and control structure of the legal person, partnership, trust or similar arrangement; and
- (f) obtaining information on the purpose and intended nature of the business relationship or occasional transaction.

(2) Customer due diligence measures include—

- (a) where the customer is not an individual, measures for verifying that any person purporting to act on behalf of the customer is authorised to do so, identifying that person and verifying the identity of that person; and
- (b) where the service provider carries on insurance business, measures for identifying each beneficiary under any long term or investment linked policy issued or to be issued by the service provider and verifying the identity of each beneficiary.

(3) Customer due diligence measures do not fall within this paragraph unless they provide for verifying the identity of persons whose identity is required to be verified, on the basis of documents, data or information obtained from a reliable and independent source.

(4) Where customer due diligence measures are required by this paragraph to include measures for identifying and verifying the identity of the beneficial owners of a person, those measures are not required to provide for the identification and verification of any individual who holds shares in a company that is listed on a recognised exchange.

### **Enhanced customer due diligence**

**4.** “Enhanced customer due diligence measures” means customer due diligence measures that involve specific and adequate measures to compensate for the higher risk of money laundering or terrorist financing.

### **Enhanced ongoing monitoring**

**5.** “Enhanced ongoing monitoring” means ongoing monitoring that involves specific and adequate measures to compensate for the higher risk of money laundering or terrorist financing.

### **Foreign regulated person**

**6.** (1) “Foreign regulated person” means a person—

- (a) that is incorporated in, or if it is not a corporate body, has its principal place of business in, a jurisdiction outside Montserrat (its “home jurisdiction”);
- (b) that carries on business outside Montserrat that, if carried on in Montserrat, would result in the person being a regulated person;
- (c) that, in respect of the business referred to in paragraph (b)—
  - (i) is subject to legal requirements in its home jurisdiction for the prevention of money laundering and terrorist financing that are consistent with the requirements of the FATF Recommendations for that business; and

- (ii) is subject to effective supervision for compliance with those legal requirements by a foreign regulatory authority.

(2) For the purposes of the definition of “foreign regulated person”, a Code may specify jurisdictions that may be regarded as having legal requirements for the prevention of money laundering that are consistent with the requirements of the FATF Recommendations.

### **Occasional transaction**

7. (1) A transaction is an occasional transaction if the transaction is carried out otherwise than as part of a business relationship, and is carried out as—

- (a) a single transaction that amounts to the sum specified in subparagraph (2), or more; or
  - (b) two or more linked transactions that, in total, amount to the sum specified in subparagraph (2), or more, where—
    - (i) it appears at the outset to any person handling any of the transactions that the transactions are linked; or
    - (ii) at any later stage it comes to the attention of any person handling any of those transactions that the transactions are linked.
- (2) The amount specified for the purposes of subparagraph (1) is—
- (a) in the case of a transaction, or linked transactions, carried in the course of a money services business, \$2,500; or
  - (b) in the case of any other transaction, or linked transactions, \$37,500.

### **Ongoing monitoring**

8. “Ongoing monitoring” of a business relationship means—

- (a) scrutinising transactions undertaken throughout the course of the relationship, including where necessary the source of funds, to ensure that the transactions are consistent with the service provider’s knowledge of the customer and his business and risk profile; and
- (b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date and relevant by undertaking reviews of existing records.

### **Politically exposed person**

9. (1) “Politically exposed person” means a person who is—

- (a) an individual who is, or has been, entrusted with a prominent public function by—
  - (i) a country other than Montserrat; or
  - (ii) an international body or organization;
- (b) an immediate family member of a person referred to in paragraph (a); or
- (c) a known close associate of a person referred to in paragraph (a).

(2) Without limiting subparagraph (1)(a), the following are politically exposed persons within the meaning of that subparagraph—

- (a) heads of state, heads of government and senior politicians;

- (b) senior government or judicial officials;
- (c) high-ranking officers in the armed forces;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors and chargés d'affaires;
- (f) senior executives of state-owned corporations; and
- (g) important political party officials.

(3) Without limiting subparagraph (1)(b), the following are immediate family members of a person specified in subparagraph (1)(a)—

- (a) a spouse;
- (b) a partner, that is an individual considered by his or her national law as equivalent to a spouse;
- (c) children and their spouses or partners, as defined in subparagraph (b);
- (d) parents;
- (e) grandparents and grandchildren; and
- (f) siblings.

(4) Without limiting subparagraph (1)(c), the following are close associates of a person specified in subparagraph (1)(a)—

- (a) any person known to maintain a close business relationship with that person or to be in a position to conduct substantial financial transactions on behalf of the person;
- (b) any person who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with that person; and
- (c) any person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of that person.

(5) For the purposes of deciding whether a person is a close associate of a person referred to in subparagraph (1)(a), a service provider need only have regard to information which is in that person's possession or is publicly known.

### **Recognised exchange**

10. (1) Subject to subparagraph (2), "recognised exchange" means—

- (a) an exchange that is a member of the World Federation of Exchanges; or
- (b) such other exchange as may be recognised by the Commission by notice published in the *Gazette*.

(2) An exchange is not a recognised exchange within the meaning of subparagraph (1)(a) if it is situated in a country specified by the Commission, by notice published in the *Gazette*, as a country that does not implement, or does not effectively apply, the FATF Recommendations.

### **Regulatory licence**

11. The following are specified as "regulatory licences"—

- (a) a licence issued under the Banking Act (Cap. 11.03);

- (b) an international banking licence issued under the International Banking and Trust Companies Act (Cap. 11.04);
- (c) a trust company licence issued under International Banking and Trust Companies Act (Cap. 11.04);
- (c) a licence issued under the Company Management Act (Cap. 11.26);
- (d) the registration of a company or an association of underwriters under the Insurance Act (Cap. 11.20);
- (e) the registration of an insurance intermediary, other than an insurance adjuster, under the Insurance Act (Cap. 11.20);
- (f) a licence to act as the manager or administrator of a mutual fund issued under the Mutual Funds Act (Cap. 11.17);
- (g) a licence issued under Part 4 or Part 9 of the Securities Act c. S13; and
- (h) the registration of a cooperative under the Cooperative Societies Act, Cap. 11.21, where the cooperative is a credit union within the meaning of that Act.

### **Service Providers**

**12.** (1) The following are “service providers” when acting in the course of a business carried on in, or from within, Montserrat—

- (a) subject to subparagraphs (3) and (4), a person that carries on any kind of regulated business;
- (b) a person who, by way of business, provides any of the following services to third parties, when providing such services—
  - (i) acting as a secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or arranging for another person to act in one of the foregoing capacities or as the director of a company;
  - (ii) providing a business, accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
  - (iii) acting as, or arranging for another person to act as, a nominee shareholder for another person;
  - (iv) arranging for another person to act as a nominee shareholder for another person;
- (c) a person who conducts as a business one or more of the following activities for, or on behalf of, a customer—
  - (i) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions, including forfeiting;
  - (ii) financial leasing;
  - (iii) issuing and managing means of payment, including credit and debit cards, cheques, travellers’ cheques, money orders and bankers’ drafts and electronic money;
  - (iv) financial guarantees or commitments;



- (v) participation in securities issues and the provision of financial services related to such issues;
  - (vi) providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
  - (vii) safekeeping and administration of cash;
  - (viii) investing administering or managing funds or money;
  - (ix) money broking;
- (d) a person who, as a business, trades for his own account or for the account of customers in—
- (i) money market instruments, including cheques, bills, certificates of deposit and derivatives;
  - (ii) foreign exchange;
  - (iii) exchange, interest rate and index instruments;
  - (iv) financial futures and options;
  - (v) commodities futures; or
  - (vi) shares and other transferable securities;
- (e) a person who, by way of business—
- (i) provides accountancy or audit services;
  - (ii) acts as a real estate agent, when the person is involved in a transaction concerning the buying and selling of real estate;
- (f) an independent legal professional;
- (g) a high value dealer.
- (2) The following are “service providers”, when acting in the course of a business, whether carried on in, from within or outside Montserrat—
- (a) a mutual fund registered or recognised, or required to be registered or recognised, under the Mutual Funds Act (Cap. 11.17) when marketing or otherwise offering its shares;
  - (b) a person who, although not licensed under the Mutual Funds Act (Cap. 11.17), acts as the administrator or manager of a public fund registered, or required to be registered, or a private or professional fund recognised, or required to be recognised, under the Mutual Funds Act.
- (3) A company that carries on insurance business is a service provider only where it carries on—
- (a) long-term insurance business; or
  - (b) any form of life insurance business or investment related insurance business that may be classified as general insurance business.
- (4) A person who carries on business as an insurance intermediary (other than as an insurance adjuster) is a service provider only where the person acts with respect to any type of business referred to in subparagraph (3)(a) or (3)(b).

(5) In subparagraphs (3) and (4), “insurance business”, “general insurance business” and “long-term insurance business” have the meanings specified in the Insurance Act (Cap. 11.20).

(6) Without limiting paragraph (1), a person or body that is incorporated or constituted in Montserrat that acts in the course of a business carried on outside Montserrat is deemed to act in the course of a business carried on from within Montserrat.

### **Shell bank**

**13.** A “shell bank” is a bank that—

- (a) is incorporated and licensed in a country in which it has no physical presence involving meaningful decision-making and management; and
- (b) is not subject to supervision by the Commission or a foreign regulatory authority, by reason of its membership of, or affiliation to, a group that is subject to effective consolidated supervision.

**SCHEDULE 2**

*(Regulations 25(1))*

**DISCIPLINARY ACTION, FINANCIAL INSTITUTIONS**

<b>REGULATION</b>	<b>BRIEF DESCRIPTION OF VIOLATION</b>	<b>ADMINISTRATIVE PENALTY (\$)</b>
4	Failure to comply with requirements in sub-regulation (2), (3), (4) or (5) concerning foreign branches or subsidiaries	\$2000 for every day the disciplinary violation continues or occurs
5(1)	Failure to apply required customer due diligence measures	\$2000 for every day the disciplinary violation continues or occurs
6	Failure to comply with requirements in sub-regulation (2) and (3) concerning business relationship with the customers	\$2000 for every day the disciplinary violation continues or occurs
7 (1)	Failure to apply enhanced due diligence in respect of any relevant requirements in (a) – (f) of 7 (1).	\$1000 for every day the disciplinary violation continues or occurs
10 (1)	Failure to take appropriate measures not to enter into correspondence banking relationship with a bank that permits its accounts to be used by a shell bank	\$2000 for every day the disciplinary violation continues or occurs
11 (1)	Failure to comply with the requirements in sub-regulation (1) not to set up or maintain a numbered account, an anonymous account or in a name that is fictitious	\$2000 for every day the disciplinary violation continues or occurs
12	Failure to comply with requirements in sub-regulations (4) and (5) concerning the maintenance of policies and procedures	\$1000 for every day the disciplinary violation continues or occurs
13	Failure to comply with the requirements in sub-regulation (1), (4), and (5) concerning the	\$1000 for every day the disciplinary violation continues or occurs

	keeping of records	
15	Failure to comply with the requirements in sub-regulations (1) and (2) concerning the training of employees	\$1000 for every day the disciplinary violation continues or occurs
16	Failure to comply with the requirements in sub-regulations (1), (3), (5) and 6 concerning the appointment of a money laundering compliance officer	\$1000 for every day the disciplinary violation continues or occurs
17	Failure to comply with the requirements in sub-regulations (1), (2), (3) and 4 concerning the appointment of a money laundering reporting officer	\$1000 for every day the disciplinary violation continues or occurs

**SCHEDULE 3**

*(Regulations 25(2))*

**DISCIPLINARY ACTION, REGULATED PERSONS (OTHER THAN FINANCIAL INSTITUTIONS)**

<b>REGULATION</b>	<b>BRIEF DESCRIPTION OF VIOLATION</b>	<b>ADMINISTRATIVE PENALTY (\$)</b>
4	Failure to comply with requirements in sub-regulation (2), (3), (4) or (5) concerning foreign branches or subsidiaries	\$2000 for every day the disciplinary violation continues or occurs
5(1)	Failure to apply required customer due diligence measures	\$2000 for every day the disciplinary violation continues or occurs
6	Failure to comply with requirements in sub-regulation (2) and (3) concerning business relationship with the customers	\$2000 for every day the disciplinary violation continues or occurs
7 (1)	Failure to apply enhanced due diligence in respect of any relevant requirements in (a) – (f) of 7 (1).	\$1000 for every day the disciplinary violation continues or occurs
10 (1)	Failure to take appropriate measures not to enter into correspondence banking relationship with a bank that permits its accounts to be used by a shell bank	\$2000 for every day the disciplinary violation continues or occurs
11 (1)	Failure to comply with the requirements in sub-regulation (1) not to set up or maintain a numbered account, an anonymous account or in a name that is fictitious	\$2000 for every day the disciplinary violation continues or occurs
12	Failure to comply with requirements in sub-regulations (4) and (5) concerning the maintenance of policies and procedures	\$1000 for every day the disciplinary violation continues or occurs
13	Failure to comply with the requirements in sub-regulation	\$1000 for every day the disciplinary violation

	(1), (4), and (5) concerning the keeping of records	continues or occurs
15	Failure to comply with the requirements in sub-regulations (1) and (2) concerning the training of employees	\$1000 for every day the disciplinary violation continues or occurs
16	Failure to comply with the requirements in sub-regulations (1), (3), (5) and 6 concerning the appointment of a money laundering compliance officer	\$1000 for every day the disciplinary violation continues or occurs
17	Failure to comply with the requirements in sub-regulations (1), (2), (3) and 4 concerning the appointment of a money laundering reporting officer	\$1000 for every day the disciplinary violation continues or occurs

**SCHEDULE 4**

*(Regulations 25(3))*

**DISCIPLINARY ACTION, NON-FINANCIAL SERVICE PROVIDERS**

<b>REGULATION</b>	<b>BRIEF DESCRIPTION OF VIOLATION</b>	<b>ADMINISTRATIVE PENALTY (\$)</b>
5(1)	Failure to apply required customer due diligence measures	\$400 for every day the disciplinary violation continues or occurs
6	Failure to comply with requirements in sub-regulation (2) and (3) concerning business relationship with the customers	\$800 for every day the disciplinary violation continues or occurs
7 (1)	Failure to apply enhanced due diligence in respect of any relevant requirements in (a) – (f) of 7 (1).	\$400 for every day the disciplinary violation continues or occurs
11 (1)	Failure to comply with the requirements in sub-regulation (1) not to set up or maintain a numbered account, an anonymous account or in a name that is fictitious	\$800 for every day the disciplinary violation continues or occurs
12	Failure to comply with requirements in sub-regulations (4) and (5) concerning the maintenance of policies and procedures	\$400 for every day the disciplinary violation continues or occurs
13	Failure to comply with the requirements in sub-regulation (1), (4), and (5) concerning the keeping of records	\$400 for every day the disciplinary violation continues or occurs
15	Failure to comply with the requirements in sub-regulations (1) and (2) concerning the training of employees	\$400 for every day the disciplinary violation continues or occurs
16	Failure to comply with the requirements in sub-regulations (1), (3), (5) and 6 concerning the appointment of a money laundering compliance officer	\$400 for every day the disciplinary violation continues or occurs

17	Failure to comply with the requirements in sub-regulations (1), (2), (3) and 4 concerning the appointment of a money laundering reporting officer	\$400 for every day the disciplinary violation continues or occurs
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Made by the Governor-in-Council this 22nd day of April, 2010.

Rachael Kelly  
Clerk of Council (Ag.)

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Rachael Kelly  
Clerk of Council (Ag.)