

CAYMAN ISLANDS



Customs and Border Control Law, 2018

(Law 34 of 2018)

**CUSTOMS AND BORDER CONTROL
(MONEY DECLARATIONS AND
DISCLOSURES) REGULATIONS, 2019**

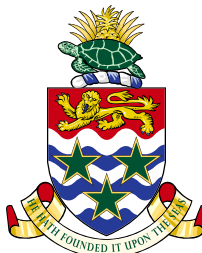
(SL 39 of 2019)

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In exercise of the powers conferred by sections 12 and 133 of the Customs and Border Control Law, 2018, the Cabinet makes the following Regulations —

Citation and commencement

1. (1) These Regulations may be cited as the Customs and Border Control (Money Declarations and Disclosures) Regulations, 2019.
- (2) These Regulations shall come into force immediately after the *Customs and Border Control (Amendment) Law, 2019* comes into force.

Definitions

2. In these Regulations —

“**false declaration**” means making a misrepresentation of the value of money that is being transported into the Islands (by undervaluing it or stating that there is none) and includes failing to make a declaration;

“**false disclosure**” means making, in response to an inquiry by an officer, a misrepresentation of the value of money that is being transported out of the Islands (by undervaluing it or stating that there is none) and includes failing to make a disclosure in response to such inquiry;

“**Financial Reporting Authority**” means the Financial Reporting Authority existing pursuant to section 3(1) of the *Proceeds of Crime Law (2019 Revision)*;

“**money laundering**” means doing an act which —

- (a) constitutes an offence under section 133, 134 or 135 of the *Proceeds of Crime Law (2019 Revision)*;
- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
- (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); or
- (d) in the case of an act done otherwise than in the Islands, would constitute an offence specified in paragraph (a), (b) or (c) if done in the Islands; and

“**terrorist financing**” means doing an act which —

- (a) constitutes an offence under section 19, 20, 21 or 22 of the *Terrorism Law (2018 Revision)*; or
- (b) in the case of an act done otherwise than in the Islands, would constitute an offence specified in paragraph (a) if done in the Islands.

Obligation to declare money: in-bound

3. (1) A person transporting into the Islands money amounting in the aggregate to ten thousand dollars or more, or its equivalent, shall declare such amount in writing to an officer at the time of entry, and supply such other particulars in relation to the declared amount as are required by the form provided for the purpose.
- (2) The Director shall determine the form to be used for purposes of the declaration and other particulars referred to in paragraph (1) and may combine the declaration with any other declaration that the Director may, under any Law, require to be made.
- (3) Subject to regulation 5, a person who makes a false declaration or supplies false particulars commits an offence and is liable on summary conviction —
 - (a) to a fine of ten thousand dollars or to imprisonment for one year, or to both; and
 - (b) to forfeiture of the money up to the value of the amount actually transported.
- (4) The operation of paragraph (3) shall not limit the operation of any other law in relation to other conduct associated with the money.
- (5) Subject to paragraph (6), this regulation applies to money being transported or imported —
 - (a) on a natural person, including in that person’s accompanying luggage or vehicle;
 - (b) in containerised or loose cargo; or



- (c) by way of postal or courier services.
- (6) The following shall be exempt from this regulation —
 - (a) the Cayman Islands Monetary Authority; and
 - (b) a common carrier of passengers with respect to money being transported or imported by its passengers.

Obligation to disclose money: out-bound

4. Regulation 3 shall apply to money being transported or exported out of the Islands in the same way that that regulation applies to money being transported or imported into the Islands, except that the disclosure is only required to be made upon verbal or written inquiry by an officer.

Administrative penalties

5. The Director may, in respect of an offence committed under regulation 3 and 4, at the Director's discretion, impose instead an administrative penalty in accordance with section 71A of the Law.

Duties and powers of officers

6. (1) An officer may, on the basis of suspicion or randomly, question any person entering or leaving the Islands, whether or not that person has made a declaration under regulation 3 or made a disclosure under regulation 4, with a view to ensuring compliance with these Regulations.
- (2) Where a person makes a false declaration or a false disclosure, an officer may, in order to ascertain whether evidence of money laundering or terrorist financing may be found, seize and detain for no more than forty-eight hours —
 - (a) where the money is in the form of cash, the amount in excess of ten thousand dollars; or
 - (b) where the money is in the form of a bearer negotiable instrument, the bearer negotiable instrument.
- (3) Where upon the expiration of forty-eight hours an officer finds no evidence of money laundering or terrorist financing, the officer shall release the money into the custody of the person from whom the money was seized.
- (4) Where pursuant to seizing a person's money under paragraph (2), an officer forms a reasonable suspicion of money laundering or terrorist financing during the forty-eight hour period, the provisions of paragraph (5) shall apply.
- (5) Where an officer forms a reasonable suspicion of money laundering or terrorist financing (whether or not the amount of money is such that it has to be declared under regulation 3 or where a person has made a false declaration or false disclosure) —

- (a) section 26 of the *Misuse of Drugs Law (2017 Revision)* shall, without limiting the operation of other provisions of that Law, apply as if the money were cash constituting the proceeds of drug trafficking or intended for use in drug trafficking contrary to that Law; and
 - (b) Schedule 3 of the *Terrorism Law (2018 Revision)* shall, without limiting the operation of other provisions of that Law, apply as if the money were “terrorist cash” as defined in paragraph 1 of that Schedule.
- (6) Without limiting the scope of these Regulations or the Law, an officer shall have all such powers as the officer would have in relation to customs and border control matters in general.

Duty of Director to retain information

7. The Director shall cause to be collected, compiled and retained for at least five years the particulars relating to —
- (a) declarations or disclosures where the sum met the threshold set out in regulation 3;
 - (b) false declarations or disclosures;
 - (c) declarations or disclosures with respect to which an officer formed reasonable suspicion of money laundering or terrorist financing; and
 - (d) such other matters in relation to declarations or disclosures as the Director may consider necessary or expedient.

Reports relating to money laundering or terrorist financing

8. Without prejudice to the obligations in or relating to Part XII of the *Anti-Money Laundering Regulations (2018 Revision)*, Part 2 of Schedule 1 to the *Terrorism Law (2018 Revision)* or any law for the time being in force relating to the duty to report, where an officer forms a reasonable suspicion that a person is transporting money that is related to money laundering or terrorist financing, whether or not the money meets the threshold prescribed by regulation 3, the officer shall report the matter to the Financial Reporting Authority.

Confidentiality and divulgement

9. (1) Subject to paragraphs (2) and (3), an officer who divulges any information which has been acquired in the course of the officer’s duties or in the exercise of powers or functions under these Regulations commits an offence and is liable —
- (a) on summary conviction, to a fine of five thousand dollars or to imprisonment for one year, or to both; and
 - (b) on conviction on indictment, to a fine of fifteen thousand dollars or to imprisonment for three years, or to both.
- (2) Paragraph (1) does not apply to a divulgement —



- (a) lawfully required or permitted by a court of competent jurisdiction within the Islands;
 - (b) where a person making a declaration or disclosure has voluntarily given consent for the information to be divulged;
 - (c) where the information divulged is or has been lawfully available to the public from any other source;
 - (d) where the information divulged is in a summary or in statistics expressed in a manner that does not enable the identity of any natural person to which the information relates to be ascertained;
 - (e) lawfully ordered in the Islands in exercise of statutory powers which require such divulgement; or
 - (f) lawfully made —
 - (i) to the Director of Public Prosecutions or a law enforcement agency in the Islands with a view to the institution of, or for the purpose of, criminal proceedings; and
 - (ii) pursuant to regulation 8 or to paragraph (3).
- (3) Subject to paragraph (4), the Customs and Border Control Service may disclose to an overseas customs authority, information in its possession necessary to enable that authority to enforce laws, regulations and rules concerning the overseas customs authority's functions or responsibilities as an authority.
- (4) Nothing in paragraph (3) authorizes a disclosure by the Customs and Border Control Service unless —
- (a) the Customs and Border Control Service has a memorandum of understanding with the recipient authority which is approved by the Minister charged with responsibility for finance and governs cooperation in customs and border control matters; and such memorandum includes provisions for disclosures that may be made under these Regulations;
 - (b) the Customs and Border Control Service is satisfied that the recipient authority is subject to adequate legal restrictions on further disclosure;
 - (c) the Customs and Border Control Service has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Customs and Border Control Service; and
 - (d) the Customs and Border Control Service is satisfied that information provided will not be used in criminal proceedings against the person providing the information, other than proceedings for an offence of perjury.

Repeal of Customs (Money Declarations and Disclosures) Regulations, 2007

10. The *Customs (Money Declarations and Disclosures) Regulations, 2007* are repealed.

Made in Cabinet the 15th day of October, 2019.

Kim Bullings
Clerk of the Cabinet

