

Seychelles

Anti-Money Laundering Act, 2006

Anti-Money Laundering Regulations, 2012

Statutory Instrument 18 of 2012

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Anti-Money Laundering Act, 2006

Anti-Money Laundering Regulations, 2012

Statutory Instrument 18 of 2012

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1. Citation

These Regulations may be cited as the Anti-Money Laundering Regulations, 2012.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” means the Anti-Money Laundering Act, 2006;

“**beneficial owner**” has the meaning given in regulation 4;

“**Bureau de Change**” has the meaning given in the Financial Institutions Act;

“**criminal conduct**” has the meaning given in section 3(9) of the Act;

“**customer due diligence measures**” has the meaning given in regulation 3;”

“**FATF**” means the intergovernmental body known as the Financial Action Task Force;

“**FATF Recommendations**” means the recommendations issued by the FATF from time to time;

“**foreign regulated person**” has the meaning given in regulation 7;

“**foreign regulatory authority**” means an authority in a country outside Seychelles which exercises functions corresponding to those of a supervisory authority with respect to enforcing compliance with the Act and these Regulations;

“**independent legal professional**” means a person or the persons specified in paragraph 3.2 of the Second Schedule to the Act;

“**legal entity**” means a body corporate, wherever incorporated, registered or formed, and includes a company and a foundation;

“**licensed bank**” means an institution licensed under the Financial Institutions Act to conduct banking business;

“**money laundering**” has the meaning given in section 3 of the Act;

“**one-off transaction**” has the meaning given in regulation 5;

“**ongoing monitoring**” has the meaning given in regulation 9(2);

“**politically exposed person**” has the meaning in given regulation 6;

“**recognised exchange**” means—

- (a) a securities exchange licensed under the Securities Act;
- (b) a recognised overseas securities exchange as defined in the Securities Act;
- (c) any other exchange that is a member of the World Federation of Exchanges;

“**recognised foreign bank**” means a bank holding a valid licence to operate as a bank in a country which is a member of the FATF;

“**shell bank**” has the meaning given in regulation 17;

“**supervisory authority**” means the authority having oversight over a reporting entity.

3. Meaning of customer due diligence measures

(1) “Customer due diligence measures” means—

- (a) identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source or from any other sources that the reporting entity has reasonable grounds to believe can be relied upon to identify and verify the identity of the customer;
- (b) where the customer is not the beneficial owner, identifying the beneficial owner and taking reasonable measures, on a risk-sensitive basis, to verify the identity of the beneficial owner, including, in the case of a legal entity, partnership or trust, measures to understand the ownership and control structure of that legal entity, partnership or trust;
- (c) obtaining information on the purpose and intended nature of the business relationship and to establish details of the business of the customer or a beneficial owner to enable the reporting entity to identify—
 - (i) complex or unusual large transactions;
 - (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; or
 - (iii) any other activity which may be, by its nature, likely to be related to money laundering, financing of terrorism or other criminal conduct; and
- (d) taking reasonable measures to ascertain the purpose of a one-off transaction and the origin and ultimate destination of funds involved in a one-off transaction or transferred as part of a business relationship.

(2) Where the customer is not an individual, the reporting entity shall take reasonable measures to—

- (a) verify that any person purporting to act on behalf of the customer is authorised to do so, and
- (b) identify and verify the identity of that person.

(3) The customer due diligence measures for identifying and verifying the identity of the beneficial owners shall not be required in respect of an individual who holds shares or other equity interests in a legal entity, partnership or trust the securities of which are listed on a recognised exchange.

4. Beneficial owner

(1) In these Regulations, “beneficial owner” means—

- (a) in the case of a legal entity, any individual who—
 - (i) exercises control over the management of the legal entity;

- (ii) in respect of a legal entity other than a legal entity whose securities are listed on a recognised exchange, owns or controls, directly or indirectly, more than 25 percent of the shares or voting rights in the body corporate or legal entity;
 - (b) in the case of a partnership, any individual who—
 - (i) ultimately is entitled to or controls, directly or indirectly, more than 25 percent of the capital or profits of the partnership or more than 25 percent of the voting rights in the partnership; or
 - (ii) otherwise exercises control over the management of the partnership;
 - (c) in the case of a trust,—
 - (i) any individual who is entitled to a specified interest in at least 25 percent of the capital of the trust property;
 - (ii) the class of persons in whose main interest the trust is set up or operates except where the trust is set up or operates entirely for the benefit of the individuals referred to in subparagraph (i);
 - (iii) any individual who has control over the trust.
 - (d) in the case of a legal entity, partnership or trust other than one referred to in paragraph (a), (b) or (c)—
 - (i) where the individuals who benefit from the legal entity, partnership or trust have been determined, any individual who benefits from at least 25 percent of the property of the legal entity, partnership or trust;
 - (ii) where the individuals who benefit from the legal entity partnership or trust are yet to be determined, the class of persons for whom the legal entity, partnership or trust is set up or operates;
 - (iii) any individual who exercises control over at least 25 percent of the property of the legal entity, partnership or trust.
- (2) For the purpose of subregulation (1)(c)—
- “control” means a power, whether exercisable alone, jointly with another person or with the consent of another person, under the trust instrument or by law to—
- (a) dispose of, advance, lend, invest, pay or apply trust property;
 - (b) vary the trust;
 - (c) add or remove a person as a beneficiary to or from a class of beneficiaries;
 - (d) appoint or remove trustees; or
 - (e) direct, withhold consent to or veto the exercise of a power such as is mentioned in paragraph (a), (b), (c) or (d).
- “specified interest” means a vested interest which is—
- (a) in possession or in remainder or reversion; and
 - (b) defeasible or indefeasible.
- (3) For the purpose of subregulation (1)(d), the beneficial owner of a legal entity who benefits from or exercises control over the property of a legal entity, partnership or trust is to be regarded as benefiting from or exercising control over the property of the legal entity, partnership or trust.
- (4) In case of death of a beneficial owner, the term “beneficial owner” means the heirs, executor or administrator of the estates of the deceased.

- (5) In any other case, “beneficial owner” means an individual who ultimately owns or controls the customer or on whose behalf a transaction is conducted.
- (6) These Regulations shall apply to a legal entity, partnership or trust carrying on any activity for which a regulatory licence is required under the Act, notwithstanding that the activity was not licensed or the licence has lapsed or been cancelled.

5. Meaning of one-off transaction

In these Regulations, “one-off transaction” means a transaction carried out other than as part of a business relationship that exceeds SCR100,000, or SCR50,000 in the case of cash transactions, whether the transaction is carried out in a single operation or several operations which appear to be linked.

6. Meaning of politically exposed person

- (1) In these Regulations, “politically exposed person” means—
 - (a) an individual who is or has been, during the preceding three years, entrusted with a prominent public function in—
 - (i) Seychelles;
 - (ii) any other country; or
 - (iii) an international body or organisation;
 - (b) an immediate family member of a person referred to in paragraph (a); or
 - (c) a close associate of a person referred to in paragraph (a).
- (2) In subregulation (1)(a), politically exposed persons includes—
 - (a) heads of state, heads of government, ministers and other and senior politicians;
 - (b) senior government or judicial officials;
 - (c) ambassadors and *chargés d'affaires*;
 - (d) high-ranking officers in the armed forces;
 - (e) members of the boards of central banks;
 - (f) members of state-owned corporations; and
 - (g) important political party officials.
- (3) In subregulation (1)(b), immediate family members of a person specified in paragraph (a) of subregulation (1) includes—
 - (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 paragraph (b);
 - (d) parents; and
 - (e) siblings.
- (4) In subregulation (1)(c), close associates of a person specified in paragraph (a) of subregulation (1) includes—
 - (a) any person who is known to have joint beneficial ownership of a legal entity, partnership, trust or any other close business relations with that legal entity, partnership or trust; and

- (b) any person who has sole beneficial ownership of a legal entity, partnership or trust which is known to have been set up for the benefit of that legal entity, partnership or trust.
- (5) In determining whether a person is a close associate of a person specified in subregulation (1)(a), a reporting entity shall have regard to public information or such information that the reporting entity has in its possession.

7. Meaning of foreign regulated person

A “foreign regulated person” means a person that—

- (a) is incorporated, registered or otherwise established, or having its principal place of business in a country outside Seychelles;
- (b) carries on a business outside Seychelles which if carried on in Seychelles constitutes—
 - (i) a regulated business;
 - (ii) the business of an independent legal professional; or
 - (iii) the business of an external accountancy service and or audit service as specified in paragraph 2.1 (a) and (c) of the Second Schedule to the Act;
- (c) in respect of a business referred to in paragraph (b), is subject to legal requirements in its country of origin for the prevention of money laundering and financing of terrorism that are consistent with the requirements of the FATF in relation to such business and to supervision by a foreign regulatory authority.

8. Application of customer due diligence measures

- (1) Subject to regulations 10, 11, 12, 13, 14 and 15, a reporting entity shall apply customer due diligence measures when—
 - (a) establishing a business relationship;
 - (b) carrying out a one-off transaction;
 - (c) the reporting entity has doubts on the veracity or adequacy of documents, data or information obtained for the purpose of identification or verification of a customer; or
 - (d) there are reasonable suspicions of money laundering, financing of terrorism or other criminal conduct.
- (2) Notwithstanding subregulation (1), a reporting entity shall apply customer due diligence measures to existing customers at appropriate times on risk-sensitive basis.
- (3) A reporting entity shall—
 - (a) determine the extent of customer due diligence measures on risk-sensitive basis depending on—
 - (i) the type of customer, business relationship, product or transaction; and
 - (ii) the guidelines issued by the FIU which are not inconsistent with the Act or these Regulations; and
 - (b) be able to demonstrate to its supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering, financing of terrorism or other criminal conduct.
- (4) Where—
 - (a) a reporting entity is required to apply customer due diligence measures in the case of a foundation or trust; and

- (b) the class of persons in whose main interest the foundation or trust is set up or operates is identified as a beneficial owner,

the reporting entity shall only be required to identify the members of the class having not less than 10 percent interest in the foundation or trust.

- (5) The reporting entity shall keep records relating to customer due diligence, ongoing monitoring, the safeguards exercised before relying on regulated persons and the business or services carried out by or with a customer or on his behalf, for the period referred to in section 6(2) of the Act.
- (6) The records kept under subregulation (5) shall be made available on request to any regulatory body including the FIU or the Attorney General in the performance of their functions.

9. Ongoing monitoring

- (1) A reporting entity shall conduct ongoing monitoring of a business relationship.
- (2) “Ongoing monitoring” of a business relationship means—
 - (a) scrutinising transactions undertaken throughout the relationship to ensure that the transactions are consistent with the reporting entity’s knowledge of the customer, the business and risk profile and the source of funds of the customer; and
 - (b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up to date.

10. Timing of customer due diligence measures

- (1) For the purpose of regulation 8(1)(a) and (b), a reporting entity shall carry out customer due diligence measures before establishing a business relationship or carrying out a one-off transaction.
- (2) The reporting entity may complete the customer due diligence measures during the establishment of a business relationship if—
 - (a) this is necessary so as not to interrupt the normal conduct of business; and
 - (b) there is low risk of money laundering, financing of terrorism or other criminal conduct,

Provided that the customer due diligence measures are completed as soon as practicable after establishing the business relationship.

11. Simplified due diligence

- (1) Subject to subregulation (2), a reporting entity may apply the customer due diligence measures in regulation 8(1)(a), (b) or (c) where—
 - (a) the customer is—
 - (i) a licensed bank;
 - (ii) a recognised foreign bank;
 - (iii) the Central Bank of Seychelles;
 - (iv) a public body in Seychelles; or
 - (v) a legal entity, partnership or trust the securities of which are listed on a recognised exchange; or
 - (b) there are reasonable grounds for believing that the product related to the relevant transaction is a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member’s interest under the scheme.

- (2) Where there is suspicion of money laundering, financing of terrorism or other criminal conduct, the reporting entity shall apply the customer due diligence measures in regulation 8(1)(a), (b) or (c).

12. Reliance on regulated persons

- (1) A “regulated person” means—
- (a) a regulated reporting entity other than a bureau de change; or
 - (b) a foreign regulated person.
- (2) Subject to subregulation (4), a reporting entity may rely on a regulated person to apply customer due diligence measures in respect of the regulated person’s customer or a person referred to in subregulation (3) if the regulated person—
- (a) consents to being relied on;
 - (b) gives the reporting entity a written undertaking that it—
 - (i) applies or will apply customer due diligence measures on an ongoing basis;
 - (ii) is under a legal obligation to keep and keeps records of the customer due diligence measures applied with respect to its customers;
 - (iii) will keep the records described in paragraph (ii) for the same period referred to section 6(2) of the Act;
 - (iv) will, without delay, on request by the reporting entity produce the original or certified copies of the records described in paragraph (ii) to the reporting entity, which records may be used as evidence in court proceedings;
 - (v) where it is about to or has ceased to carry on business, shall forward to the reporting entity all records of customer due diligence measures applied in respect of its customers.
- (3) For the purpose of subregulation (2), a reporting entity may rely on a regulated person to apply customer due diligence measures in respect of—
- (a) any beneficial owner or controller of the customer;
 - (b) any third party for whom the customer is acting;
 - (c) any beneficial owner or controller of a third party for whom the customer is acting; or
 - (d) any person purporting to act on behalf of a customer.
- (4) This regulation shall not apply to—
- (a) a licensed bank;
 - (b) a bureau de change; or
 - (c) a reporting entity referred to in paragraph 7.1 (a) and (b) of the Second Schedule to the Act.
- (5) Where a reporting entity becomes aware that a regulated person on whom it has relied to conduct customer due diligence measures in respect of its customers is about to or has ceased to carry on business, the reporting entity shall immediately take all reasonable steps to take possession of and keep the records of the customer due diligence measures applied with respect of its customers for the period referred to in section 6(2) of the Act.
- (6) Where a reporting entity relies on a regulated person to apply customer due diligence measures in respect of the regulated person’s customer or a person referred to in subregulation (3), the ultimate responsibility for applying the customer due diligence measures remains with the reporting entity.

13. Politically exposed persons

- (1) Where a reporting entity knows or has reasonable grounds to believe that a customer, or a beneficial owner of a customer, residing in or outside Seychelles is or becomes a politically exposed person, the reporting entity shall apply, on a risk-sensitive basis, enhanced customer due diligence measures and enhanced ongoing monitoring.
- (2) For the purpose of subregulation (1), the reporting entity shall, in addition to the measures provided in regulation 8 (1)—
 - (a) obtain the approval of the senior management before a business relationship is established with the customer;
 - (b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or one-off transaction;
 - (c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the relationship; or
 - (d) apply such other measures provided for in the guidelines issued by the FIU to compensate for the higher risk of money laundering, financing of terrorism or other criminal conduct.

14. Correspondent banking relationship

A licensed bank shall not enter into a correspondent banking relationship with a bank or other credit institution situated outside Seychelles unless the licensed bank—

- (a) gathers sufficient information about the bank or credit institution so as to understand fully the nature of the business of that bank or credit institution;
- (b) is satisfied on reasonable grounds, based on publicly available information, that the reputation of the bank or credit institution and the quality of supervision or monitoring of the operation of that bank or credit institution in the other country are sound, adequate and effective;
- (c) is satisfied on reasonable grounds, having assessed the anti-money laundering and anti-terrorist financing controls applied by the bank or credit institution, that those controls are sound, adequate and effective;
- (d) obtains approval of the Board of Directors;
- (e) documents the responsibilities of the bank or credit institution in applying anti-money laundering and anti-terrorist financing controls to customers in the conduct of the correspondent banking relationship; and
- (f) in the case of customers of the bank or credit institution who have direct access to a payable-through account held with the licensed bank in the name of the bank or credit institution, is satisfied on reasonable grounds that the bank or credit institution—
 - (i) has identified and verified the identity of those customers, and is able to provide to the licensed bank, upon request, the documents, whether or not in electronic form, or information used by the credit institution to identify and verify the identity, of those customers;
 - (ii) has applied measures equivalent to the measures referred to in regulation 8 in relation to those customers; and
 - (iii) is applying measures equivalent to the measures referred to in regulation 9 in relation to those customers.

15. Enhanced due diligence in other cases

- (1) Notwithstanding regulations 13 and 14, a reporting entity shall apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring in any other situation which by its nature can present a higher risk of money laundering, financing of terrorism or other criminal conduct.
- (2) Without limiting the generality of subregulation (1), a reporting entity shall apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring in respect of business relationships with persons from, and transactions in, countries which do not apply or fully apply the FATF Recommendations.

16. Branches and subsidiaries

- (1) A reporting entity shall require its branches and subsidiaries outside Seychelles to apply, to the extent permitted by the laws of the country where they are located, measures at least equivalent to those set out in these Regulations with regard to customer due diligence, ongoing monitoring and record-keeping.
- (2) Where no such equivalent customer due diligence measures are required under the laws of the country where the branches and subsidiaries are located, the reporting entity shall—
 - (a) inform its supervisory authority accordingly;
 - (b) apply the customer due diligence measures provided in these Regulations, as applicable to the risk of money laundering, financing of terrorism or other criminal conduct; and
 - (c) produce to the FIU, without delay on request, all information data and documents in the possession or control of such branch or subsidiary undertaking in accordance with the obligations of the reporting entity under these Regulations.

17. Shell banks

- (1) A licensed bank shall—
 - (a) not enter into or continue a correspondent banking relationship with a shell bank; and
 - (b) take appropriate measures to ensure that it does not enter into, or continue, a banking relationship with a bank that is known to permit its accounts to be used by a shell bank.
- (2) In this regulation—
 - (a) a “shell bank” is a bank, or an institution engaged in equivalent activities, that—
 - (i) is incorporated in a country in which it has no physical presence involving meaningful decision-making and management; and
 - (ii) is not subject to supervision by the Central Bank of Seychelles or a foreign regulatory authority, by reason that it is not affiliated to any financial services group that is subject to effective consolidated supervision;
 - (b) “correspondent banking” means the provision of banking services by one bank to another bank; and
 - (c) “banking services” includes—
 - (i) cash management, including establishing interest-bearing accounts in different currencies;
 - (ii) international wire transfers of funds;
 - (iii) cheque clearing;

- (iv) payable-through accounts; and
- (v) foreign exchange services.