

Financial Intelligence and Anti-Money Laundering Regulations 2003

[GN 79 of 2003 –21 June 2003] [Section 35]

1. These regulations may be cited as the Financial Intelligence and Anti-Money Laundering Regulations 2003.

2. In these regulations –

“Act” means the Financial Intelligence and Anti-Money Laundering Act;

“applicant for business” means a person who seeks to form a business relationship, or carry out a one-off transaction with a relevant person;

“business relationship” means an arrangement between a person and a relevant person, where the purpose or effect of the arrangement is to facilitate the carrying out of transactions between the person and the relevant person on a frequent, habitual or regular basis;

“eligible introducer” means any person who introduces an applicant for business to a relevant person in Mauritius and –

(a) is regulated under the Act or any similar legislation in an equivalent jurisdiction, or is subject to rules of professional conduct relating to the prevention of money laundering and terrorist financing; and

(b) is based in Mauritius or in an equivalent jurisdiction;

“equivalent jurisdiction” means such jurisdiction having standards pertaining to measures on anti-money laundering comparable to Mauritius as may be specified in the guidelines issued by the FIU under regulation 10;

“group introducer” means an introducer which is part of the same group as the relevant person to whom the applicant for business is introduced and is, for anti-money laundering purposes, subject to

(a) the consolidated supervision of a regulator in Mauritius or in an equivalent jurisdiction; or

(b) the anti-money laundering regulations of a regulator in Mauritius or in an equivalent jurisdiction;

“Money Laundering Reporting Officer” means an officer appointed pursuant to regulation 6(1)(a);

“omnibus account” means an account which is held with a relevant person in the name of a financial institution, or a bank, which is regulated under the Act or regulations made under it, or any similar legislation in an equivalent jurisdiction and –

(a) the assets of the customers of the financial institution or the bank are held in aggregate in such account; or

(b) such account is held on behalf of pooled entities, including collective investment schemes, pension funds and such other bodies, plans or schemes as the Minister may designate;

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

“reference account” means an account that is identifiable solely by the reference assigned to that account;

“relevant person” means a bank, financial institution or cash dealer.

[Reg. 2 amended by reg. 3 of GN 117 of 2005 w.e.f. 9 July 2005; reg. 3(a) of GN 127 of 2006 w.e.f. 23 September 2006.]

3. (1) No person shall, in the course of his conduct of business as a relevant person, open an anonymous or fictitious account.

(2) No bank or financial institution shall allow any person with whom it forms a business relationship to conduct any transaction with the bank or the financial institution, by means of a reference account unless the bank or the financial institution has duly verified the identity of the applicant for business in accordance with these regulations.

4. (1) Subject to regulation 5, every relevant person shall, in the circumstances set out in paragraph (2), establish and verify in accordance with this regulation –

- (a) the identity and the current permanent address of an applicant for business; and
- (b) the nature of the applicant's business, his financial status and the capacity in which he is entering into the business relationship with the relevant person.

(2) The circumstances specified in paragraph (1) shall be –

- (a) where the parties form, or resolve to form, a business relationship between them;
- (b) in respect of a one-off transaction, where a relevant person dealing with the transaction knows or has reasonable grounds to suspect that the transaction is a suspicious transaction;
- (c) in respect of a one-off transaction, where payment is to be made by, or to the applicant for business of an amount exceeding 350,000 rupees or an equivalent amount in foreign currency; and
- (d) in respect of 2 or more one-off transactions, where it appears at the outset or subsequently to a relevant person dealing with any of the transactions, that the transactions are linked and that the total amount, in respect of all of the transactions, which is payable by or to the applicant for business exceeds 350,000 rupees or an equivalent amount in foreign currency.

(3) Where, at the time of the transaction, the amount of money involved is not known, the obligation to establish the identity of the applicant for business shall apply as soon as the amount becomes known or the threshold of 350,000 rupees cash, or an equivalent amount in foreign currency is reached.

(4) Subject to paragraph (6), where an applicant for business is an individual customer, he shall, for the purposes of paragraph (1)(a), submit to a relevant person, the original or a certified copy of an official valid document containing details of his current permanent address, a recent photograph of him and such other documents as may be required, to enable the relevant person to establish his identity.

(5) Subject to paragraph (6), proof of identity shall be evidenced, in the case of –

- (a) a body of persons, whether corporate or unincorporate, by –
 - (i) official documents, and such other information as may be required, which collectively establish their legal existence;
 - (ii) a certified copy of the resolution of the Board of Directors or managing body and the power of attorney granted to its managers, officers or employees to transact on its behalf; and
- (b) every manager, officer and employee referred to in subparagraph (a)(ii), by the same documents as those specified in paragraph (4).

(6) (a) Where an applicant for business is introduced to a relevant person by an eligible introducer or a group introducer, it shall be sufficient compliance with paragraphs (4) and (5) where the relevant person –

- (i) obtains and maintains documentary evidence that the eligible introducer or group introducer is regulated for the purposes of preventing money laundering and terrorist financing; and
- (ii) is satisfied that the procedures laid down by the eligible introducer or group introducer meet the requirements specified in the Act, or any code or guidelines issued by a supervisory authority.

(b) A relevant person relying on customer identification documentation in the possession of an eligible introducer or group introducer shall not be required to retain copies of that customer identification documentation in his own records where he is satisfied that he may, on request, obtain that customer identification documentation from the eligible introducer or group introducer.

(c) Every relevant person shall comply with the requirements specified in any code or

guidelines issued by its supervisory authority, relating to the conduct of business with eligible introducers or group introducers.

(7) A relevant person shall, at the time of establishing a business relationship, take reasonable measures to determine whether the applicant for business is acting on behalf of a third party.

(8) (a) Subject to subparagraph (b), a relevant person who determines that the applicant for business is acting on behalf of a third party shall keep a record that sets out –

- (i) where the third party is a natural person, the identity of the third party;
- (ii) where the third party is a body corporate or unincorporate, proof of identity as specified in paragraph (5); and
- (iii) the relationship between the third party and the applicant for business.

(b) (i) Subparagraph (a) shall not apply to an omnibus account which is held by a relevant person.

(ii) Every relevant person shall comply with any code or guidelines issued by its supervisory authority in respect of omnibus accounts.

(9) Where a relevant person is not able to determine that the applicant for business is acting for a third party, he shall –

- (a) make a record of the grounds for suspecting that the applicant for business is so acting; and
- (b) make a suspicious transaction report to the FIU.

(10) In determining what constitutes “reasonable measures” for the purpose of paragraph (7), all the circumstances of the case shall be taken into account, and regard shall be had to any guideline or code applicable to the relevant person and, in the absence of any guideline or code, to best practice which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances.

(11) A relevant person shall comply with regulation 4(1) as soon as reasonably practicable after he has entered into a business relationship with an applicant for business with a view to –

- (a) agreeing with the applicant for business to carry out an initial transaction; or
- (b) reaching an understanding, whether binding or not, with the applicant for business that it may carry future transactions.

(12) For the purpose of paragraph (11), where the applicant for business does not supply evidence of identity as soon as reasonably practicable, the relevant person shall –

- (i) discontinue any transaction it is conducting for him; and
- (ii) bring to an end any understanding it has reached with him,

unless the relevant person has informed the Financial Intelligence Unit.

[Reg. 4 amended by reg. 4 of GN 117 of 2005 w.e.f. 9 July 2005.]

5. (1) A relevant person may not comply with identification procedures where –

- (a) the applicant for business –
 - (i) is itself a bank, a financial institution or a cash dealer; and
 - (ii) is based in Mauritius or in an equivalent jurisdiction;
- (b) in respect of a life insurance policy –
 - (i) the annual premium does not exceed 40,000 rupees; or
 - (ii) the single premium does not exceed 100,000 rupees; or
- (c) the proceeds of a one-off transaction are not paid, but are directly reinvested in another transaction on behalf of the person to whom the proceeds are payable, provided the relevant person keeps a record of those transactions.

(2) Every relevant person shall, in the circumstances referred to in paragraph (1)(a), obtain and

retain from the applicant for business, written documentary evidence of the existence of its legal entity and of its regulated status.

[Reg. 5 revoked and replaced by reg. 3(b) of GN 127 of 2006 w.e.f. 23 September 2006.]

- 6.** (1) A relevant person shall adopt internal reporting procedures which shall include –
- (a) identifying and appointing a Money Laundering Reporting Officer to whom a report is to be made of any information or other matter which comes to the attention of any person handling a transaction and which, in the opinion of the person, gives rise to knowledge or reasonable suspicion that another person is engaged in money laundering or financing of terrorism;
 - (b) requiring that any such report be considered in light of all relevant information furnished to the Money Laundering Reporting Officer, for the purpose of determining whether the information or other matter contained in the report gives rise to such knowledge or suspicion;
 - (c) ensuring that the Money Laundering Reporting Officer has reasonable access to any other information which may be of assistance to him in considering the report.

(2) The Money Laundering Reporting Officer shall be a senior officer and shall have relevant and necessary competence, authority and independence.

7. (1) The Money Laundering Reporting Officer shall report forthwith to the FIU in such form as may be prescribed, any transaction that he has reason to believe is a suspicious transaction.

(2) Where the FIU receives a report made by a Money Laundering Reporting Officer pursuant to paragraph (1), it shall forthwith acknowledge receipt of the report.

- 8.** (1) For the purpose of section 17(b) of the Act, every relevant person shall keep –
- (a) records of customer identification for not less than 5 years after the closure of the account or cessation of business relationship with the customer;
 - (b) records of transactions carried out for customers for not less than 5 years after completion of the transactions;
 - (c) records of all reports made to and by the Money Laundering Reporting Officer for not less than 5 years after the date on which the report is made; and
 - (d) records of any money laundering training delivered to employees.

(2) Notwithstanding paragraph (1), any guideline or code applicable to a relevant person may provide for keeping the records for a longer period.

9. (1) Every relevant person shall implement internal controls and other procedures to combat money laundering and financing of terrorism.

- (2) The internal controls and other procedures referred to in paragraph (1) shall include –
- (a) programmes for assessing risks relating to money laundering and financing of terrorism;
 - (b) the formulation of a control policy that will cover issues of timing, degree of control, areas to be controlled, responsibilities and follow-up;
 - (c) monitoring programmes in relation to complex, unusual or large transactions;
 - (d) enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place against money laundering and financing of terrorism;
 - (e) providing employees, including the Money Laundering Reporting Officer, from time to time with training in the recognition and handling of suspicious transactions;
 - (f) making employees aware of the procedures under the Act, codes and guidelines and any other relevant policies that are adopted by the relevant person;
 - (g) establishing and maintaining a manual of compliance procedures in relation to anti-money laundering.

10. The the Financial Intelligence Unit may, for the purposes of the Act and these regulations, issue

guidelines.

11. Any person who contravenes these regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.