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Laws

Regulations

2019

Anti-Money Laundering (Ammendment) Regulation

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Anti-Money Laundering (Amendment)

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THE ANTI-MONEY LAUNDERING ACT
(CAP.423)

REGULATIONS

(Made under section 29)

THE ANTI-MONEY LAUNDERING (AMENDMENT) REGULATIONS, 2019

- Citation
G. N. No.289
of 2012
- Amendment
of
Regulation 3
1. These Regulations may be cited as the Anti-Money Laundering (Amendment) Regulations, 2019 and shall be read as one with the Anti-Money Laundering Regulations 2012 hereinafter referred to as the principal Regulations.
 2. The principal Regulation is amended in regulation 3 by-
 - (1) deleting sub-regulation (1) of regulation 3 and substituting for it the following:

“3.-(1) Where a reporting person is dealing with an individual who is a citizen of, or resident in the United Republic he shall be required to obtain from such person the following information and documents–

 - (a) full names, nationality, occupation, and residential address;
 - (b) date and place of birth;
 - (c) in case of a citizen, a national identity card or in the absence of such information, a passport, birth certificate, voters’ registration card or driving license;
 - (d) in case of a resident, a residence permit and passport;
 - (e) an introductory letter from relevant public authority such as ward secretary for customers who do not have national identity cards;
 - (f) for employees, an introductory letter from employer;

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- (g) Tax Identification Number, if such a number has been issued to that person;
 - (h) where the customer is a student, the student's identity card and an introductory letter from the student's institution;
 - (i) Signature;
 - (j) a thumb print for customers who do not have national identity cards.
- (2) by deleting sub-regulation (2)(e).
(3) by renumbering sub-regulation (2)(f) and (g) as (2)(e) and (f) respectively.

Amendment
of regulation
7

3. The Principal Regulation is amended in Regulation 7 by-

- (1) inserting immediately after paragraph (b) the following new paragraph-
 - “(c) resolution of the Board of Directors to open an account and identification of those who have authority to operate the account;
- (2) by renumbering paragraph (c) to (h) as (d) to (i) respectively.”

Addition of
new
regulation
17A

4. The principal Regulations are amended by adding immediately after regulation 17, the following new regulation:

"Report 17A.-(1) For purposes of determining the extent of customer due diligence measures on a persons risk sensitivity basis under Regulation 28 (6) to carry and (8), a reporting person shall take out appropriate steps to assess and understand the money risks of money laundering and terrorist launder financing relating to its-
ing and (a) customers;
terrorist (b) geographic areas in which it operates;
financi (c) products or services;
ng risk (d) transactions;
assess (e) delivery channels.
ment

- (2) In carrying out the risk assessment

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required under sub-regulation (1), the reporting person shall take into account-

- (a) the National Money Laundering and Terrorist Financing Risk Assessment Report;
- (b) the sector or industry money laundering and terrorist financing risk assessment;
- (c) information made available by the Financial Intelligence Unit and Regulator of the reporting person; and
- (d) any other relevant information.

(3) The ways in which a relevant reporting person complies with the requirement to take customer due diligence measures, and the extent of the measures taken.

- (a) must reflect-
 - (i) the risk assessment carried out by the reporting person under regulation 17A(1);
 - (ii) its assessment of the level of risk arising in any particular case;
- (b) may differ from case to case.

(4) In assessing the level of risk in a particular case, the relevant person shall take account of factors including

- (a) the type and purpose of an account, transaction or business relationship;
- (b) the size of the transactions undertaken by the customer;
- (c) the regularity and duration of the business relationship;
- (d) geographical location of the transaction.

Addition of new regulation 17B

5. The principal Regulations are amended by adding immediately after the amended regulation 17A the following new regulation-

"Policies, controls and procedures to mitigate and

17B.-(1) A reporting person shall-
(a) establish and maintain policies, controls and procedures to mitigate and manage risks of money laundering and terrorist financing identified in any risk assessment undertaken

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manage
money
laundering
and
terrorist
financing
risks

by the reporting person;
(b) regularly review and update the policies, controls and procedures established under sub-regulation (1) of this regulation;

(c) maintain a record in writing of-
(i) the policies, controls and procedures established under paragraph (a);
(ii) any changes to those policies, controls and procedures made as a result of the review and update required by paragraph (b).

(2) The policies, controls and procedures adopted by a reporting person under sub-regulation (1) shall be-

(a) proportionate with regard to the size and nature of the reporting persons business;
(b) approved by its Board of directors or its equivalent.

(3) The policies, controls and procedures referred to in sub-regulation (1) shall provide for-

(a) risk management practices;
(b) customer due diligence;
(c) monitoring and management of compliance of such policies, controls and procedures.”

Amendment
of regulation
28

6. The principal Regulations are amended by adding immediately after regulation 28, the following new regulations:

"Applica-
tion of
enhanced
due
diligence

28A.-(1) A reporting person shall apply enhanced customer due diligence measures and enhanced ongoing monitoring, in addition to the customer due diligence measures required under regulation 3 to 16 to manage and mitigate the risks arising-

(a) in any case identified as one where there is a high risk of money laundering or terrorist financing by the reporting person under regulation 17A(1);
(b) in any transaction or business relationship

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- with a person established in a high-risk jurisdiction;
- (c) in relation to cross-border correspondent relationships;
- (d) if a reporting person has determined that a customer or potential customer is a PEP, or a family member or known close associate of a PEP;
- (e) in any case where a customer has provided false or stolen identification documentation or information on establishing a relationship;
- (f) in any case where-
 - (i) a transaction is complex and unusually large, or
 - (ii) there is an unusual pattern of transactions, and the transaction or transactions have no apparent economic or legal purpose, or
- (g) in any other case which by its nature can present a higher risk of money laundering and terrorist financing.

(2) When assessing whether there is a high risk of money laundering and terrorist financing in a particular situation, and the extent of the measures which are to be taken to manage and mitigate that risk, a reporting person shall take account of at least the following risk factors-

- (a) customer risk factors, including whether
 - (i) the business relationship is conducted in unusual circumstances;
 - (ii) the customer is resident in a geographical area considered to be an area of high risk;
 - (iii) the customer is a legal person or arrangement that is a vehicle for holding personal assets;
 - (iv) the customer is a company that has nominee shareholders or shares in bearer form;
 - (v) the customer is a business that is cash intensive;

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- (vi) the corporate structure of the customer is unusual or excessively complex given the nature of the company's business including where the ultimate beneficial owner cannot be determined;
- (b) product, service, transaction or delivery channel risk factors, including whether-
 - (i) the product involves private banking;
 - (ii) the product or transaction is one which might favour anonymity;
 - (iii) the situation involves non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures;
 - (iv) payments will be received from unknown or unassociated third parties;
 - (v) new products and new business practices are involved, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products;
 - (vi) the service involves the provision of nominee directors, nominee shareholders or shadow directors, or the formation of companies in third countries;
 - (vii) the service involves provision of service to customers without established business relationship to reporting person such as walk-in customer;
- (c) geographical risk factors, including-
 - (i) countries identified by credible sources such as the Financial Action Task Force Reports, as not having effective systems to counter money laundering and terrorist financing;
 - (ii) countries subject to sanctions, embargos or similar measures issued by United Nations Security Council Resolutions.
 - (iii) countries that have organizations designated-
 - (aa) by the United Republic as

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proscribed organizations or suspected international terrorists under the Prevention of Terrorism Act or

- (bb) in any resolution of the United Nations Security Council or any instrument of international community as terrorist organizations as provided for under the Prevention of Terrorism Act.

(3) The enhanced customer due diligence measures taken by a reporting person for the purpose of paragraph (1) shall include-

- (a) as far as reasonably possible, examining the background and purpose of the transaction, and
- (b) Increasing the degree and nature of monitoring of the business relationship in which the transaction is made to determine whether that transaction or that relationship appear to be suspicious.

(4) Enhanced customer due diligence measures required under paragraph (1) may also include, depending on the requirements of the case, one or more of the following measures-

- (a) obtaining additional information on the customer (e.g. occupation, volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner;
- (b) obtaining additional information on the intended nature of the business relationship;
- (c) obtaining information on the source of funds or source of wealth of the customer;
- (d) obtaining information on the reasons for intended or performed transactions;
- (e) obtaining the approval of senior management to commence or continue the business relationship;
- (f) Conducting enhanced monitoring of the

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business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

Simplified
due
diligence

28B.-(1) A reporting person may apply simplified customer due diligence measures in relation to a particular business relationship or transaction if it determines that the business relationship or transaction presents a low degree of risk of money laundering or terrorist financing, having taken into account-

- (a) the risk assessment it carried out under regulation 17A(1);
- (b) relevant information provided to it in accordance with regulations 17A(2)(b); and
- (c) the risk factors referred to in sub-regulation (4).

(2) Where a relevant person is applying simplified customer due diligence measures he shall -

- (a) continue to comply with the requirements in regulation 3 to 16, but may adjust the extent of the measures he undertakes under that regulation to reflect his determination under paragraph (1);
- (b) carry out sufficient monitoring of any transactions or business relationships which are subject to those measures to enable him to detect any unusual or suspicious transactions.

(3) Simplified customer due diligence measures required under sub-regulation (2) may include, depending on the requirements of the case, one or more of the following measures-

- (a) verifying the identity of the customer and the beneficial owner after the establishment of the business relationship
- (b) reducing the frequency of customer identification updates;
- (c) reducing the degree of on-going monitoring and scrutinizing transactions, based on a

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- reasonable monetary threshold;
- (d) not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established.
- (4) When assessing whether there is a low degree of risk of money laundering and terrorist financing in a particular situation, and the extent to which it is appropriate to apply simplified customer due diligence measures in that situation, the reporting person shall take account of at least the following risk factors-
- (a) customer risk factors, including whether the customer-
- (i) is a public administration, or a publically owned enterprise;
 - (ii) is an individual resident in a geographical area of lower risk;
 - (iii) is a company whose securities are listed on a regulated market, and the location of the regulated market;
- (b) product, service, transaction or delivery channel risk factors, including whether the product or service is-
- (i) a life insurance policy for which the premium is low;
 - (ii) an insurance policy for a pension scheme which does not provide for an early surrender option, and cannot be used as collateral;
 - (iii) a pension or similar scheme which satisfies the following conditions
 - (aa) the scheme provides retirement benefits to employees;
 - (bb) contributions to the scheme are made by way of deductions from wages;
 - (iv) a financial product or service that provides appropriately defined and

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- limited services to certain types of customers to increase access for financial inclusion purposes;
- (v) a product where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership;
- (c) geographical risk factors, including whether the country where the customer is resident, established or registered or in which it operates is-
- (i) a jurisdiction which has effective systems to counter money laundering and terrorist financing;
 - (ii) a third country which, on the basis of credible sources, such as the Financial Action Task Force, has requirements to counter money laundering and terrorist financing that are consistent with the standards published by the Financial Action Task Force.
- (5) In determining what customer due diligence measures to take, and the extent of those measures, reporting person shall also take account of any guidelines issued by the FIU in that regard.
- (6) A reporting person shall not continue to apply simplified customer due diligence measures under subregulation (1)-
- (a) if it doubts the veracity or accuracy of any documents or information previously obtained for the purposes of identification or verification;
 - (b) if its risk assessment changes and it no longer considers that there is a low degree of risk of money laundering or terrorist financing; or
 - (c) if it suspects money laundering or terrorist financing”.

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Addition of
new
regulation
36A

7. The principal Regulations are amended by adding immediately after regulation 36, the following new regulation:

"Initial and periodical disclosure of financial position of FIU employees 36A. Any employee of the FIU who holds a leadership position in terms of the Public Leadership Code of Ethics Act shall submit to the Ethics Commissioner a written declaration of all property or assets owned by him, or liabilities owed to him, his spouse or unmarried minor in a manner prescribed in that Act".

Amendment
of regulation
37

8. The principal Regulation is amended in regulation 37 by-

- (a) inserting immediately after sub-regulation (2)(d) the following new paragraph:
“(e) a fine not exceeding five million shillings and not less than one million shillings per day for which a default is committed”;
- (b) renaming the current sub-regulation (2)(e) and (2)(f) as sub-regulation (2)(f) and (2)(g) respectively;
- (c) deleting sub-regulation (6).

Dodoma,
7th May, 2019

PHILIP I. MPANGO,
Minister for Finance and Planning