



**ANTI-MONEY LAUNDERING AND COUNTERING OF FINANCING OF  
TERRORISM RULES AND REGULATIONS 2022  
(3<sup>RD</sup> Edition)**

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In exercise of powers conferred by the Anti-Money Laundering and Countering of Financing of Terrorism (AML and CFT) Act of Bhutan 2018 (Act), the Financial Intelligence Department (FID) hereby issues the Anti-Money Laundering and Countering of Financing of Terrorism (AML and CFT) Rules and Regulations 2022. All references to Chapters and Sections in these Rules and Regulations pertains to the Act and must be read together with the Act.

## **CHAPTER I: PRELIMINARY**

### **Introduction**

Money laundering (ML) and terrorism financing (TF) continue to be on-going threats which have the potential to adversely affect the country's reputation and investment climate, which may lead to economic and social consequences. The globalization of the financial services industry and advancement in technology has posed challenges to regulators and law enforcement agencies as criminals have become more sophisticated in utilizing reporting entities (REs) to launder illicit funds and use them as conduits for ML and TF activities. These Rules and Regulations are necessary to create an effective legal framework to counter ML and TF and apply international best practices and standards.

### **Short Title, Extent and Commencement**

1. These Rules and Regulations shall:
  - (1) Be cited as the AML and CFT Rules and Regulations 2022;
  - (2) These AML and CFT Rules and Regulations 2022 shall be applicable to all reporting entities (REs), Law Enforcement Agencies and Supervisors; and
  - (3) Come into force with effect from 1<sup>st</sup> June 2022.

### **Supersession and Saving**

2. These Rules and Regulations 2022 shall supersede the AML/CFT Rules and Regulations 2018. However, provisions implemented as per the AML/CFT Rules and Regulations 2018 shall remain legally binding, unless certain provisions are affected through separate orders issued subsequently by the Financial Intelligence Department (FID).

### **Rule of Construction**

3. In these Rules and Regulations, unless the context indicates otherwise, the singular shall include the plural and the masculine gender shall include the feminine gender and vice versa.

## **CHAPTER II: ORGANIZATIONAL FRAMEWORK TO PREVENT ML AND TF IN BHUTAN**

### **National Coordination Committee and its members**

4. The National Coordination Committee (NCC) shall comprise of members as specified under Section 7 of the AML and CFT Act 2018 (Hereafter referred as the Act).

### **Technical Committee and its members**

5. The Technical Committee (TC) is an inter-agency committee established under Section 17 of the Act. The TC members shall consist of representatives from the relevant agencies for AML and CFT which shall be approved by the NCC.

### **Objectives of TC**

6. The objectives of TC are:
  - (1) Advising the NCC on technical and other relevant matters; and
  - (2) Assisting the FID in implementing the provisions of the Act, rules and regulations and to implement the international best practices for AML and CFT.

### **Roles and responsibilities of TC**

7. The TC member shall, within their respective ministries/agencies, be responsible for:
  - (3) Preparing draft policies to prevent ML and TF and presenting those to the NCC;
  - (4) Ensuring effectiveness of relevant ministries/agencies in implementing the policies adopted;
  - (5) Formulating measures or strategies necessary for the control of ML and TF offences;
  - (6) Coordinating and facilitating implementation of the AML and CFT measures or strategies;
  - (7) Strengthening interagency coordination and information sharing in preventing ML and TF;
  - (8) Preparing work-plans for implementing policies and decisions adopted by the NCC;
  - (9) Conducting research related to ML and TF and present to the NCC with recommendations;
  - (10) Promoting awareness on AML and CFT; and
  - (11) Performing any other relevant functions, as may be directed by the NCC.

### **Remuneration**

8. The NCC, TC members, and Secretaries to the respective committees shall be paid sitting fees at rates approved by the RMA Board.
9. The alternate TC members attending the meeting shall be paid sitting fee of the TC members.

**Confidentiality**

10. Except for the performance of his/her roles and responsibilities; no members or experts invited shall disclose any information acquired by them whilst working for the Committees.

**Professional Development**

11. The NCC and TC members may be provided training and development programs to enable them to discharge their duties and responsibilities professionally and effectively.
12. In-country retreat/workshop may be conducted, if felt necessary.

## **CHAPTER III-FINANCIAL INTELLIGENCE DEPARTMENT**

### **Confidentiality and protection of information**

13. The FID shall receive a transaction report from REs as per Chapter VII of these Rules and Regulations.
14. Except for the performance of his duties or the exercise of his functions, or when required to do so by any court, or under the provision of any law, no staff either seconded or assigned to the FID as per Sections 27 and 28 of the Act, or who/which are engaged as consultants or contractors by the FID shall disclose or communicate to any person any information acquired by them while working for the FID.
15. The FID shall establish procedures through SOP to provide for the security and confidentiality of information held by the FID that shall include provisions dealing with handling and usage, storage, dissemination, protection of, and access to its information.
16. The FID shall ensure that its staff members appointed or seconded pursuant to Sections 27 and 28 of the Act are subject to appropriate vetting and security clearances, and that they are trained to understand their duties and responsibilities in handling sensitive and confidential information.
17. The FID shall ensure that its premises are secure and that only authorized persons are able to get access to them or to its data.

### **Entering into MoU with Domestic Agencies**

18. The FID in addition to the powers stated pursuant to Section 31 of the Act, shall have the power to enter into memorandum of understanding with domestic agencies, as determined by the Department, for the exchange of information and general cooperation.

### **Receipt of information to/from foreign counterparts**

19. A foreign counterpart shall mean a foreign FIUs that is either a member of the Egmont Group or a foreign FIU with which the FID has a memorandum of understanding in place as mandated under Section 31 of the Act.
20. The FID may disseminate information to a foreign FIU, either spontaneously or in response to a request, if it is satisfied that appropriate arrangements or undertakings either specified in the Egmont Group FIUs Operational Guidance for FIU Activities and the Exchange of Information or information usage is explicitly communicated and reflected in the memorandum of understanding.
21. The FID shall request a foreign FIU for information where it either believes that the foreign FIU possesses or may obtain information that is relevant to analysis being conducted by the FID or that may be relevant to an investigation by a law enforcement agency.



### **Dissemination of information to domestic Law Enforcement Agencies**

22. To discharge the function under Section 37 (4) of the Act, the FID shall disseminate:
- (1) Reports containing analysis of financial intelligence and other information together with any relevant source documents; or
  - (2) Documents or other information obtained from REs pertaining to reports disseminated without any further analysis.
23. The decision to disseminate information in accordance with Section 37 (4) of the Act shall be at the discretion of the Head of the FID or members of the FID staff authorized by the Head of the FID. Such decisions shall be made spontaneously by the FID or upon receipt of a request for the information from a law enforcement agency. Such decisions shall be made as and when required or upon receipt of the request for information from a law enforcement agency.

### **Temporary freezing notice**

24. The FID shall issue a freeze notice to REs and the owner of the property in line with Sections 32 and 33 of the Act and it shall be served by:
- (1) Delivering it to the office or business premises of the addressee; or
  - (2) Transmitting it via email or other electronic communication channels.
  - (3) The freeze notice shall be for a maximum period of twenty one days.
25. Notwithstanding Section 24(3) of this rule and regulation, FID shall issue order to revoke the freeze notice after dissemination of the intelligence report to the law enforcement agency if there is elements of ML and TF or on completion of its analysis in the event there is no elements of ML and TF.

## **CHAPTER IV: SUPERVISORS**

### **Duties of Supervisors**

26. The general obligation imposed upon Supervisors under Section 38 of the Act includes REs subject to their supervision to comply with the preventative measures stipulated in Chapter IV of the Act and obligations imposed on REs relating to targeted financial sanctions under Chapter VI of the Act.

### **Supervisors to adopt risk-based approach (RBA)**

27. As mandated under Section 46 of the Act, the Supervisors shall carry out onsite and offsite AML and CFT supervision as and when required to review the following:

- (1) The ML and TF risks and the policies, internal controls, and procedures associated with the REs or if REs are part of a group, the internal controls and procedures associated with the group, as identified by the Supervisor's assessment of the REs or group's risk profile;
- (2) The ML and TF risks present in the country; and
- (3) The characteristics of REs or groups, in particular the diversity and number of REs and the degree of discretion allowed to them under the application of RBA approach to the control of their ML and TF risks.

### **Cooperation between Supervisors**

28. Supervisors shall, subject to any laws relating to their power to exchange or release information, will share information with other Supervisors, both domestic or foreign, for the purpose of facilitating AML and CFT supervisory activities.

29. The information to be shared with another Supervisor pursuant to Section 28 of these Rules and Regulations includes information that is currently held by the Supervisor, or information that the Supervisor would be empowered to obtain from REs pursuant to Section 47 of the Act. Without limiting the generality of information sharing power, the types of information that might be shared shall include:

- (1) regulatory information such as information on the domestic regulatory systems that are in place and general information of the financial sector;
- (2) prudential information such as information on REs' business activities, beneficial ownership, management, and fit and properness of senior management and Board Directors; and
- (3) AML and CFT information such as internal AML and CFT policies and procedures of REs, customer due diligence information, customer files, and information relating to transactions.

30. Supervisors may conduct enquiries on behalf of foreign counterparts and may request their foreign counterparts to conduct enquiries on their behalf. Assistance shall be provided to foreign counterparts, particularly for the purpose of conducting effective group supervision.
31. Where a Supervisor obtains information from a foreign counterpart, it shall ensure that it is being authorized by that counterpart before the information is disseminated or used for supervisory or other purposes. Where a Supervisor is obliged by law to make use of such information without authorization, it shall promptly notify its counterpart of such obligations.
32. The following are the identified Supervisors for the REs:
  - (1) Jabmi Tshogdey: lawyers registered pursuant to the Jabmi (amendment) Act of Bhutan 2016.
  - (2) Ministry of Economic Affairs: real estate agents, dealers in precious stones, and dealers in precious metals.
  - (3) Royal Monetary Authority: banks, insurers or reinsurers, securities brokers, investment advisors, investment fund operators, securities depositories or registries, foreign exchange dealers, money value transfer service providers, and any financial service providers licensed/registered by the RMA.
33. The respective Supervisors shall supervise the following activities undertaken by lawyers or accountants when they prepare for or carry out transactions to members of the public:
  - (1) Buying and selling real estate;
  - (2) Managing client money, securities or other assets including bank, savings or securities accounts;
  - (3) Organization of contributions for the creation, operation or management of companies; and
  - (4) Creation, operation or management of legal persons or arrangements, and buying and selling business entities.

## **CHAPTER V: REPORTING ENTITIES**

### **Management of ML and TF risks**

34. The risk-based approach (RBA) to be undertaken by REs pursuant to Section 51 of the Act shall involve the assessment of ML and TF risk and the management of this risk. Where risk is found to be high, enhanced measures including enhanced customer due diligence is required. Where risk is found to be low, simplified due diligence measures may be applied in accordance with the Act and the Rules and Regulations.
35. When REs undertakes an assessment of its ML and TF risks pursuant to Section 52 of the Act, it shall:
- (1) Take appropriate steps to identify, assess and understand its ML and TF risks in relation to its customers, the countries or geographical areas in which it operates and its products, services, transaction modalities and delivery channels;
  - (2) Consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;
  - (3) Keep the assessment up-to-date through undertaking periodic reviews, as and when required; and
  - (4) Have an appropriate mechanism to provide up-to-date risk assessment information to its supervisory authority.
36. Where REs have been permitted to apply simplified CDD measures in accordance with Section 53 (2) of the Act, such measures shall be suspended, whenever a suspicion of ML and TF arises then REs shall submit a suspicious transaction report.

### **Risk profiling**

37. REs shall conduct risk profiling on their customers.
38. Risk profiling shall include the following:
- (1) An assessment of customer risk;
  - (2) Geographical location of business or country of origin of customers;
  - (3) Products, services, transactions or delivery channels; and
  - (4) Any other information suggesting that the customer is of higher risk.
39. REs shall review and update the customer risk profiles in accordance with their level of assessed ML and TF risks.

### **Risk reporting**

40. REs shall provide timely reports of the risk assessments, general risk profiles and the effectiveness of risk control and mitigation measures to the Board and Senior Management. The frequency of reporting shall commensurate with the level of risks involved and the RE's operating environment.
41. The reports of the risk assessments, general risk profiles and the effectiveness of risk

control and mitigation measures shall be endorsed by the Board/the competent committee /authority of REs, where there is no Board.

42. Reports under Section 40 shall include:

- (1) Results of AML and CFT monitoring activities carried out by the REs such as level of exposure to ML and TF risks, break-down of ML and TF risk exposures based on key activities or customer segments, trends of suspicious transaction reports and cash transaction reports, trends of orders received from law enforcement agencies;
- (2) Details of recent significant risk events, that occur either internally or externally, *modus operandi* of money launderers and its impact or potential impact to the REs; and
- (3) The implications of changes to AML and CFT laws and Rules and Regulations.

### **Internal controls**

43. Where RE is governed by the board of directors, the board shall:

- (1) Understand its role and responsibility in managing ML and TF risks faced by the REs;
- (2) Be aware of the ML and TF risks associated with business strategies, delivery channels and geographical coverage of the REs' business products and services; and
- (3) Understand the AML and CFT measures required by Act, and the international standards and best practices as well as the importance of implementing AML and CFT measures to prevent the REs from being abused by criminals, money launderers and financiers of terrorism.

44. For the purpose of complying with the requirements of Section 54 of the Act, the Board of Directors of REs shall have the following roles and responsibilities:

- (1) Maintain accountability and oversight for establishing AML and CFT policies and minimum standards;
- (2) Approve policies regarding AML and CFT measures within the REs, including those required for risk assessment, mitigation and profiling, customer due diligence, record keeping, on-going due diligence, reporting of suspicious transaction reports, and combating the financing of terrorism;
- (3) Establish appropriate mechanisms to ensure the AML and CFT policies are periodically reviewed and assessed in line with changes and developments in the REs' products and services, technology as well as trends in ML and TF;
- (4) Establish an effective internal control system for AML and CFT and maintain adequate oversight of the overall AML and CFT measures undertaken by the REs;
- (5) Define the lines of authority and responsibility for implementing the AML and CFT measures and ensure that there is a separation of duty among those implementing the policies and procedures and those enforcing the controls;
- (6) Ensure effective internal audit function in assessing and evaluating the robustness and adequacy of controls implemented to prevent ML and TF;
- (7) Assess the implementation of the approved AML and CFT policies through regular reporting and updates by the Senior Management and Audit Committee; and

- (8) Establish a management information system that is reflective of the nature of the REs' operations, size of business, complexity of business operations and structure, risk profiles of products and services offered, and geographical coverage.

45. Senior Management of REs are responsible for the implementation and management of AML and CFT compliance programs pursuant to Section 54 of the Act and in accordance with the REs' policies and procedures, requirements of the law, rules and regulations, guidelines, and the international standards and best practices.

46. The Senior Management of REs shall have the following roles and responsibilities:

- (1) Be aware of and understand the ML and TF risks associated with business strategies, delivery channels and geographical coverage of its business products and services offered and to be offered including new products, new delivery channels and new geographical coverage;
- (2) Formulate AML and CFT policies to ensure that they are in line with the risks profiles, nature of business, complexity, volume of the transactions undertaken by the REs, and geographical coverage;
- (3) Establish appropriate mechanisms and formulate procedures to effectively implement AML and CFT policies and internal controls, including the mechanism and procedures to monitor and detect complex and unusual transactions;
- (4) Review and propose the necessary changes to the AML and CFT policies reflecting the REs' risk profiles, institutional and group business structure, delivery channels, and geographical coverage;
- (5) Ensure that timely periodic reports are provided to it or to the Board (if applicable) on the level of ML and TF risks facing the REs, strength and adequacy of risk management, and internal controls implemented to manage the risks and the latest development on AML and CFT which may have an impact on the REs;
- (6) Allocate adequate resources to effectively implement AML and CFT compliance programs that are reflective of the size and complexity of the REs operations and risk profiles;
- (7) Appoint an Anti-Money Laundering Compliance Officer (AMLCO) at Head Office and designate an AMLCO at each branch or subsidiary;
- (8) Provide appropriate AML and CFT training for the employees of the REs;
- (9) Ensure that there is a proper channel of communication in place to effectively communicate the AML and CFT policies and procedures to all employees;
- (10) Ensure that AML and CFT issues raised are addressed in a timely manner; and
- (11) Ensure the integrity of the employees by establishing appropriate employee assessment systems.

47. The AMLCO designated pursuant to Section 57 of the Act shall be the reference point for AML and CFT matters within the REs for the implementation of, and periodic compliance with the Act and the rules and regulations. The AMLCO shall be:

- (1) Appointed at the senior management level with sufficient authority within the REs to participate and be able to take decisions relating to AML and CFT matters; and

- (2) A fit and proper person to carry out his AML and CFT responsibilities effectively.
48. For the purposes of Section 47 (2), fit and proper shall include minimum criteria relating to:
- (1) Probity, personal integrity and reputation; and
  - (2) Competency and capability.
49. The AMLCO shall have the necessary knowledge and expertise to effectively discharge his roles and responsibilities, including being informed of the latest development in ML and TF techniques and the AML and CFT measures undertaken by the industry.
50. The Board shall endorse the appointment of AMLCO after the completion of the fit and proper test conducted by the Management. A directive on the fit and proper test criteria for the appointment of AMLCO shall be issued by the FID.
51. REs shall encourage the AMLCO to pursue professional qualifications in AML and CFT so that they are able to carry out their responsibilities effectively.
52. REs shall develop and document the clear duties and responsibilities of the AMLCO.
53. The AMLCO has the responsibilities but not limited to the following:
- (1) The REs' compliance with the AML and CFT requirements;
  - (2) Proper implementation of the REs' AML and CFT policies;
  - (3) The formulation of appropriate AML and CFT procedures, including CDD, record-keeping, on-going due diligence, reporting of suspicious transactions, and combating the financing of terrorism, and to ensure these are implemented effectively;
  - (4) The AML and CFT mechanism are regularly assessed to ensure that it is effective and adequate to address any changes in ML and TF trends;
  - (5) The channel of communication from employees to the branch or subsidiary compliance officer and subsequently to the AMLCO is secured and the information is kept confidential;
  - (6) All employees are aware of the REs' AML and CFT measures, including policies, control mechanism, and the channel of reporting;
  - (7) Internally generated suspicious transaction reports by the branch or subsidiary are appropriately evaluated before submission to the FID; and
  - (8) The identification of ML and TF risks associated with new products or services arising from the REs' operational changes, including the introduction of new technology and processes.
54. REs are required to inform in writing to the FID, within ten working days, on the appointment or change of the AMLCO, including such details as the name, designation, office address, office telephone, e-mail address, and such other information as may be required.

55. REs are required to establish an employee assessment system that is commensurate with the size of their operations and their exposure to the ML and TF risk.
56. The screening procedures under the employee assessment system shall apply during the hiring of the employees and throughout the course of employment, especially for the front-line employees the assessment shall be more frequent and for the rest of the employees the assessment may be carried out periodically which shall be prescribed in REs internal policies.
57. For the purposes of Section 56, an employee assessment system shall include
- (1) an evaluation of an employee's personal history including criminal record, employment, financial/credit history; and
  - (2) clear parameters or circumstances to trigger re-screening of employees during the course of their employment.
58. In conducting financial history assessment, reporting entities may require employees to submit relevant credit reports issued by the credit information bureau or to complete self-declarations on the required information.

#### **HR Development**

59. REs shall conduct awareness and training programs on AML and CFT practices and measures for their employees. Such training must be conducted regularly and supplemented with refresher courses.
60. The employees shall be made aware that they may be held personally liable for any failure to observe the AML and CFT requirements.
61. The REs shall share their AML and CFT policies and procedures to all employees. AML and CFT measures shall contain provisions from AML and CFT Act, Rules and Regulations, and any policies issued by FID or by relevant supervisory authorities.
62. The training conducted for employees shall be appropriate to their responsibilities in detecting ML and TF activities and the risks of ML and TF faced by the REs.
63. The employees who deal directly with the customer shall be trained on AML and CFT prior to dealing with customers.
64. The training for all employees may provide a general background on ML and TF, the requirements and obligations to monitor and report suspicious transactions to the AMLCO and the importance of CDD.
65. The training shall be provided to specific categories of employees:



**(1) Front-Line Employees:**

Front-line employees shall be trained to conduct effective on-going CDD, detect suspicious transactions and on the measures that need to be taken upon determining a transaction as suspicious. Training shall also be provided on factors that may give rise to suspicion, such as dealing with occasional customers transacting in large cash volumes, PEPs, higher-risk customers, and the circumstances where enhanced CDD is required.

**(2) Employees that Establish Business Relationships:**

The training for employees who establish business relationships shall focus on customer identification, verification and CDD procedures, including when to conduct enhanced CDD and circumstances where there is a need to defer establishing business relationship with a new customer until CDD is completed satisfactorily.

**(3) Senior Management/Managers:**

The training shall include overall aspects of AML and CFT procedures, in particular, the RBA to CDD, risk profiling of customers, enforcement actions that can be taken in the event of non-compliances with the AML/CFT requirements.

66. REs that are part of a financial group shall be subject to group-wide AML and CFT policies and procedures that are applicable to all branches and subsidiaries of the financial group. These policies and procedures shall include the measures referred to in this section and be subject to group level compliance and audit requirements.

67. Group level compliance by REs shall be supported by appropriate mechanisms for the exchange of customer, account and transaction information between branches and subsidiaries, subject to appropriate safeguards on the confidentiality and use of information that is exchanged.

**Training for REs Agents**

68. Reporting entities are required to ensure their insurance and banking agents receive initial and on-going training on relevant AML/CFT obligations.

69. The training programme for the insurance and banking agents shall include the following:

- (1) AML/CFT policies and procedures of reporting entity including CDD, verification and record keeping requirements; and
- (2) the identification and escalation of suspicious transactions to the reporting entity.

70. Upon identification of any suspicious transaction, the insurance and banking agents must report the suspicious transaction reports to the AMLCO at the reporting entity in accordance with its reporting mechanism.

## **Independent audit function**

71. In accordance with Section 55 (5) of the Act, Senior Management and the Board of a RE is responsible to ensure regular independent audits of the internal AML and CFT measures to determine their effectiveness and compliance with the Act, its rules and regulations, any directives issued by the FID as well as laws, rules and regulations of other supervisory authorities, where applicable.
72. The Senior Management and Board of a RE is required to ensure that the duties and responsibilities of the auditor are clearly defined and documented. The duties and responsibilities of the auditor shall include, at a minimum:
- (1) Checking and testing the compliance with, and effectiveness of the AML and CFT policies, procedures and controls; and
  - (2) Assessing whether current measures are in line with the latest developments and changes to the relevant AML and CFT requirements.
73. The scope of independent audit shall include, at a minimum:
- (1) To check RE's compliance with the Act and by-laws issued;
  - (2) Compliance with the financial institution's internal AML and CFT policies and procedures;
  - (3) Adequacy and effectiveness of the AML and CFT compliance programme; and
  - (4) Reliability, integrity, and timeliness of the internal and REs' and management of information systems.
74. The auditor shall submit a written audit report to the Board Audit Committee highlighting the assessment on the effectiveness of AML and CFT measures and any inadequacy in internal controls and procedures.
75. RE shall ensure that independent audits are being carried out at the institution level at least on an annual basis.
76. RE shall ensure that such audit findings and the necessary corrective measures undertaken are kept with their AML and CFT records and shall be provided to the FID or their supervisor during the onsite inspection and as and when required for regulatory purposes.

## **Reviews and reporting**

77. REs shall review their AML and CFT programmes developed and implemented under Section 54 of the Act based on risk or when significant changes are made to their business or when any previous assessment is irrelevant.
78. REs shall submit their revised AML and CFT programmes to the FID and supervisors.

## **Record keeping**

79. Where the FID or a law enforcement agency considers that the records of REs are relevant

for an investigation, it shall direct REs through a notice to retain such records.

80. Any records referred to in a notice issued pursuant to Section 79 shall be retained until the notice is withdrawn by the issuing authority in writing notwithstanding the requirements of Section 68 of the Act.
81. REs shall ensure that all records referred to in Section 68 of the Act shall be made available without delay to the FID, supervisors or law enforcement agencies as required by the Act and by-laws.

**AML/CFT information system**

82. REs shall have in place an adequate AML/CFT information system, either electronically or manually, to complement its CDD process. The AML/CFT information system is required to provide the REs with timely information on a regular basis to enable the REs to detect irregularity and/or any suspicious activity.
83. The AML/CFT information system shall be commensurate with the nature, scale and complexity of the REs' activities and ML and TF risk profile.
84. The AML/CFT information system shall include, at a minimum, information on multiple transactions over a certain period, large transactions, anomaly in transaction patterns, customer's risk profile, and transactions exceeding any internally specified threshold.
85. The AML/CFT information system shall be able to aggregate customer's transactions from multiple accounts and/or from different systems.
86. The AML/CFT information system may be integrated with the RE's information system that contains its customer's normal transactions or business profile, which is accurate, up-to- date and reliable.

## **CHAPTER VI: CUSTOMER DUE DILIGENCE**

### **When customer due diligence (CDD) is required:**

87. REs shall be required to undertake CDD measures when:

- (1) Establishing business relations;
- (2) Carrying out occasional transactions above the applicable prescribed threshold of Nu. 300,000/- including situations where the transaction is carried out in a single operation or in several operations that appear to be linked;
- (3) Carrying out cash transactions involving an amount equivalent to Nu. 300,000/- and above;
- (4) Carrying out occasional transactions that are wire transfers in the circumstances covered by Chapter XI of these Rules and Regulations;
- (5) There is a suspicion of ML and TF, regardless of amount;
- (6) The REs have doubts about the veracity or adequacy of previously obtained customer identification information; or
- (7) Any other activities that FID may identify and notify the REs.

88. In relation to international funds transfers and cross border movements of cash and bearer negotiable instruments undertaken on behalf of non-account holding customers, REs shall obtain specified customer and beneficiary details and provide reports to the FID.

89. In case of inward international transfer, REs shall obtain remitter's identification details.

### **Requirements for CDD**

90. REs shall identify the customer (whether permanent or occasional, and whether natural or legal person or legal arrangement) and verify that customer's identity using reliable, independent source documents, data or information (identification data). Prior to providing a financial service to a customer, REs shall verify the following identification documentation, record the specified information in relation to that customer and retain a copy of the documents for the period specified in Section 68 of the Act and Sections 83 to 85 of this Rules and Regulations. In the case of:

(1) An individual:

- a. Verify the Citizenship Identity Card issued by Ministry of Home and Cultural Affairs (MoHCA) or any other identification document issued by a competent authority and retain a copy of the document;
- b. Record the full name;
- c. Record the permanent and present address;
- d. Anticipated gross annual income;
- e. Occupation;
- f. Record the telephone or mobile number; and
- g. Record the Taxpayer Identification Number (if applicable).

(2) Partnerships:

- a. Record the name of the entity and the full name of each partner;

- b. Verify the general business licence issued by the Ministry of Economic Affairs (MoEA) and retain a copy of the document;
- c. Record the address of the partnership;
- d. Verify the Citizenship Identity Card issued by the MoHCA or other identification document issued by a competent authority and retain a copy of the document for each partner;
- e. Record the permanent and present address of each partner;
- f. Record the telephone or mobile number of each partner;
- g. Record the Taxpayer Identification Number of each partner (if applicable);
- h. Obtain two passport sized photographs of each partner; and
- i. Obtain the latest tax returns for the partnership, if the partnership has been in operation for more than one year.

(3) Companies:

- a. Name of the company and full name of board directors;
- b. Name of shareholders (other than companies listed on the stock exchange);
- c. Obtain a copy of the company registration certificate;
- d. Record the address of the company;
- e. Verify the Citizenship Identity Card issued by MoHCA or any other identification document issued by a competent authority and retain a copy of the document for board directors;
- f. Record the permanent and present address of board directors;
- g. Record the telephone or mobile number of board directors;
- h. Record the Taxpayer Identification Number of board directors (if applicable);
- i. Obtain two passport sized photographs of board directors; and
- j. Obtain the latest financial returns for the company or, if no return is available, an estimate on annual income.

(4) Trusts:

- a. Name of the entity and full name of each trustee including head of the trust organization and any person responsible for finance;
- b. The identity of the settlor and protector of the trust;
- c. The identity of the beneficiaries and the identity of any other person holding a similar or equivalent position or otherwise exercising ultimate effective control over the trust or its property or fund;
- d. A copy of the document that establishes and regulates the trust and stipulates its powers;
- e. Obtain a copy of the trust registration certificate;
- f. Record the address of the trust;
- g. Verify the Citizenship Identity Card issued by the MoHCA or any other identification document issued by a competent government authority and retain a copy of the document for trustee;
- h. Record the permanent and present address of trustee;
- i. Record the telephone or mobile number of each trustee;
- j. Record the Taxpayer Identification Number of trustee (if applicable);
- k. Obtain two passport sized photographs of trustee; and
- l. Obtain the latest financial returns for the trust or, if no return is available, an estimate on annual income.

These provisions shall apply to trusts created for or on behalf of the Government of the Kingdom of Bhutan and any foreign trust.

(5) Associations and clubs:

- a. Name of the association or club;
- b. If registered, obtain a copy of registration certificate;
- c. Obtain copy of resolution authorizing the obtaining of the financial service;
- d. Record the full name of office holders;
- e. Verify the Citizenship Identity Card by the MoHCA or any other identification document issued by a competent government authority and retain a copy of the document for each office holder;
- f. Record the permanent and present address of each office holder;
- g. Record the telephone or mobile number of each office holder;
- h. Record the Taxpayer Identification Number of each office holder (if applicable);

- i. Obtain two passport sized photographs of each office holder; and
- j. Obtain the latest financial returns for the association or club or, if no return is available, an estimate on annual income.

Bhutanese and foreign Civil Society Organizations (CSOs) registered or accredited under the Civil Society Organizations Act of Bhutan 2007 or amendment thereof shall be regarded as Associations.

Any unregistered entity established for a public or common purpose consisting of 5 or more members (other than family members) shall be regarded as Associations.

Religious Organizations registered or exempted from registration in accordance with the Religious Organizations Act of Bhutan 2007 and amendment thereof shall be regarded as Associations.

(6) Government Bodies including entities established by the Constitution of the Kingdom of Bhutan, entities established by Parliament, the Armed Forces and militia and the Royal Bhutan Police:

- a. Full name of the body;
- b. Address of the headquarters and any relevant regional or local office;
- c. Legislative or other basis on which the government body has been established;
- d. Written authorisation signed by the agency head for the person(s) concerned to open the account or undertake the transaction;
- e. Full name(s) and position(s) of authorized signatories to the account or for the transaction;
- f. Verify the Citizenship Identity Card or other identification document issued by Ministry of Home and Cultural Affairs (MoHCA) or a passport and retain a copy of the document for each concerned person;
- g. Record the permanent and present address of each person concerned;
- h. Record the telephone or mobile number of each person concerned;
- i. Record the Taxpayer Identification Number of each person concerned (if applicable); and
- j. Obtain two passport sized photographs of each.

- (7) Identification requirements for other entities:
- a. The identification requirements in subsection (5) applies in the case of a financial service being provided to:
    - i. a foreign aid agency not covered by subsection (5);
    - ii. a trade union; or
    - iii. a political party.
  - b. In the case of any other entity, domestic or foreign, the requirements of subsection (5) apply to non-government entities and subsection (6) applies to government entities.

91. REs shall:

- (1) verify that any person purporting to act on behalf of the customer (either natural person or legal persons/arrangements) is so authorized, and identify and verify the identity of that person;
- (2) identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from a reliable source, such that the REs are satisfied that they know the identity of the beneficial owner;
- (3) understand and, as appropriate, obtain information for the purpose and intended nature of the business relationship; and
- (4) conduct ongoing due diligence on the business relationship, including:
  - a. Scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the REs knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and
  - b. Ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers.

92. In conducting CDD, REs shall comply with requirements on combating the financing of terrorism under Chapter VI of the Act and any rules issued under that Chapter of the Act and under these Rules and Regulations.

### **Specific CDD measures required for legal persons and arrangements**

93. For customers that are legal persons or legal arrangements (domestic/foreign), the REs shall understand the nature of the customer's business and its ownership and control structure.



94. For customers that are legal persons or legal arrangements, the REs shall verify the identity of the customer as required under Section 93 as follows:

- (1) Name, legal form and proof of existence;
- (2) The powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement; and
- (3) The address of the registered office and, if different, a principal place of business.

95. For customers that are legal persons, the REs shall take reasonable measures to verify the identity of beneficial owners as follows:

- (1) The identity of the natural person(s) (if any) who ultimately has a controlling ownership interest in a legal person;
- (2) To the extent that there is doubt under (1) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; and
- (3) Where no natural person is identified under (1) or (2) above, the identity of the relevant natural person who holds the position of senior management.

96. For customers that are legal arrangements (domestic/foreign), the REs shall identify and take reasonable measures to verify the identity of beneficial owners as follows:

- (1) For trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership); and
- (2) For other types of legal arrangements, the identity of persons in equivalent or similar positions.

#### **CDD for beneficiaries of life insurance policies**

97. In addition to the CDD measures required for the customer and the beneficial owner, the REs shall conduct the following CDD measures on the beneficiary of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated:

- (1) For a beneficiary that is identified as specifically named natural or legal persons or legal arrangements- taking the name of the person;
- (2) For a beneficiary that is designated by characteristics or by class or by other means- obtaining sufficient information concerning the beneficiary satisfying that the REs that they will be able to establish the identity the beneficiary at the time of the payout; and
- (3) For both the above cases- the verification of the identity of the beneficiary shall occur at the time of the payout.

98. REs shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the REs determine that a beneficiary who is a legal person or a legal arrangement presents a higher risk, they shall take enhanced measures which shall include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay-out.

### **Timing of verification**

99. REs shall verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers; or (if permitted) may complete verification after the establishment of the business relationship, provided that:

- (1) This occurs as soon as reasonably practicable;
- (2) This is essential not to interrupt the normal conduct of business; and
- (3) The ML and TF risks are effectively managed.

100. REs shall adopt risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification.

### **Existing customers**

101. REs shall apply CDD requirements to existing customers on the basis of materiality and risk.

102. REs shall conduct CDD on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained. In the event, if the KYC is not updated by the customer, then the REs shall terminate the business relationship after serving a notice to the customer to update the KYC within one month.

103. In assessing materiality and risk of the existing customer under Sections 101 and 102 of these rules and regulation, REs shall consider the following circumstances:

- (1) The nature and circumstances surrounding the transaction;
- (2) Any material changes in the way the account or business relationship is operated;  
or
- (3) Insufficient information held on the customer or change in customer's information.

### **Failure to satisfactorily complete CDD**

104. Where REs are unable to comply with relevant CDD measures:

- (1) They shall not open the account, commence business relations or perform the transaction;
- (2) They shall terminate the business relationship; and
- (3) They shall submit a suspicious transaction report in relation to the customer to the FID.

### **CDD and tipping-off**

105. In cases where REs forms a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer, they shall be permitted not to pursue the CDD process, and instead they shall submit a suspicious transaction report to the FID.

### **Enhanced and simplified CDD**

106. REs shall perform enhanced CDD where the ML and TF risks are assessed as higher risk. An enhanced CDD, shall include at least, the following:

- (1) Obtaining CDD information as required under this Chapter VI;
- (2) Obtaining additional information on the customer and beneficial owner appropriate to the identified risk (e.g., amount of assets and other information from public database);
- (3) Inquiring on the source of wealth or source of funds. In the case of PEPs, both sources shall be obtained; and
- (4) Obtaining approval from the Senior Management of the REs before establishing (or continuing, for existing customer) such business relationship with the customer. In the case of PEPs, Senior Management refers to Senior Management at the head office.

107. In addition to Section 106, REs shall also consider the following enhanced CDD measures in line with the ML and TF risks identified:

- (1) Obtaining additional information on the intended level and nature of the business relationship;
- (2) Updating more regularly the identification data of customer and beneficial owner;
- (3) Inquiring on the reasons for intended or performed transactions; and
- (4) Requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.

108. Where REs having assessed its ML and TF risks in accordance with Section 52 of the Act and these Rules and Regulations, comes to the view that a product or activity presents a low risk of ML, it may apply in writing to its supervisor for authorization to apply simplified CDD measures in relation to that product or activity.

109. A supervisor may permit specified simplified CDD measures if:

- (1) It is satisfied that the REs has completed a satisfactory assessment of its ML and TF risks in accordance with Section 52 of the Act and Section 35 of these Rules and Regulations and that the assessment is consistent with the risks identified in the national risk assessment and the risks applicable to the relevant REs; and
- (2) It has consulted with FID about the proposed simplified CDD measures and FID has agreed that the measures are appropriate under the circumstances. In case of FID being the supervisor, it shall take its decision based on subsection (1).

110. A simplified CDD measure permitted pursuant to Section 109 shall be communicated to

the requesting REs in writing and shall be subject to appropriate conditions for its operation including (where appropriate): expiration dates; review requirements; reporting requirements or other measures that the supervisor considers are appropriate.

111. A simplified CDD measure permitted pursuant to Section 110 may include provisions that relax or suspend requirements set out in this Chapter.

112. Where a simplified CDD measure has been introduced by REs in accordance with Section 108, the REs shall enforce the measure as if it was a part of these Rules and Regulations. Failure to do so will therefore amount to an offence against Section 169 (2) of the Act.

### **Ongoing due diligence**

113. REs shall conduct on-going due diligence on the business relationship with their customers. Such measures shall include:

- (1) Scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the REs knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and
- (2) Ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records particularly for higher risk customers.

114. In conducting on-going due diligence, REs shall take into consideration the economic background and purpose of any transaction or business relationship which:

- (1) Appears unusual;
- (2) Is inconsistent with the expected type of activity and business model when compared to the volume of transaction;
- (3) Does not have any apparent economic purpose; or
- (4) Casts doubt on the legality of such transactions, especially with regard to complex and large transactions or involving higher risk customers.

115. The frequency of the on-going due diligence or enhanced on-going due diligence, as the case may be, shall be commensurate with the level of ML and TF risks posed by the customer based on the risk profiles and nature of transactions.

116. REs shall increase the number and timing of controls applied, when conducting enhanced on-going due diligence.

### **Politically exposed persons (PEPs)**

#### **FOREIGN PEPS**

117. REs shall put in place a risk management system to determine whether a customer or a beneficial owner is a foreign PEP.

118. Staff of REs shall obtain Senior Management approval before establishing (or continuing, for existing customers) a business relationship with a foreign PEP.
119. REs shall take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as foreign PEPs.
120. REs shall conduct enhanced CDD as set out under Section 106 of these Rules and Regulations.

### **Domestic PEPs**

121. REs shall take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or PEP by reason of the fact that they are a person entrusted with a prominent function by an international organisation.
122. If the customer or beneficial owner is assessed as a domestic PEP or a person who is a PEP because they have been entrusted with a prominent function by an international organisation, REs shall assess the level of ML and TF risks posed by the business relationship of such customers.
123. The assessment of the ML and TF risks, as specified under Section 122 of these Rules and Regulations shall take into account the risk profile of the customer.
124. The requirements of enhanced CDD stipulated under Section 106 and ongoing due diligence stipulated under Section 113 of these Rules and Regulations shall be conducted in respect of PEPs who are domestic PEPs or persons who are PEPs because they have been entrusted with a prominent function by an international organization and who have been assessed as higher risk.
125. REs shall apply CDD measures similar to other customers for domestic PEPs or persons entrusted with a prominent function by an international organisation if the REs are satisfied that these persons are not assessed as higher risk.
126. In relation to life insurance policies, REs shall take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the payout.
127. Where higher risks are identified in relation to life insurance policies, REs shall inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to submit a suspicious transaction report to the FID based on the outcome of their enhanced scrutiny.

## **CHAPTER VII: TRANSACTION REPORTING**

### **Reporting mechanisms**

128. REs shall establish a reporting mechanism for the reporting of suspicious transaction reports and cash transaction reports.

### **Suspicious transaction report (STR)**

129. REs shall ensure that information concerning any suspicious transaction that may arise during the course of business undertaken by the REs are transmitted to the AMLCO.

130. The AMLCO shall ensure that a report of any suspicious transaction is submitted to the FID as stipulated under Sections 69 to 73 of the Act through Bhutan Financial Intelligence Analysis System (BFIAS).

131. For REs that have not been granted access to BFIAS, the AMLCO must submit the suspicious transaction report, using the specified reporting template, through email at [str@rma.org.bt](mailto:str@rma.org.bt).

132. REs shall ensure that in the course of submitting the STR, utmost care is taken to ensure that such reports are treated with the highest level of confidentiality. The AMLCO or a person authorized by the AMLCO has the sole discretion and independence to report suspicious transactions on behalf of REs.

133. REs shall develop internal criteria (“red flags”) applicable to their risk profile for the purpose of detecting suspicious transactions.

134. For the purpose of developing the internal criteria referred to in Section 133, REs may be guided by examples of suspicious transactions provided by the FID or other competent authorities or international organizations or their internally developed guidelines based on their practice.

135. REs shall ensure that the AMLCO maintains a complete file on all internally generated reports of suspicious transactions and any supporting documentary evidence, regardless of whether such reports have been submitted pursuant to Section 69 of the Act for a period of 10 years. These records shall be made available to FID or the relevant supervisor upon request.

### **Cash transaction report and other reports**

136. A cash transaction report (CTR) pursuant to Section 74 of the Act is required for a cash transaction which exceeds Nu. 300,000/-.
137. Multiple cash transactions of less than Nu. 300,000/- occurring over a period of up to 7 days but which exceed Nu. 300,000/- when added together shall be regarded as a single transaction for complying with Section 74 of the Act. Period up to 7 days shall mean the consecutive days from the last transaction to the current transaction irrespective of month rollover (example, a transaction that occurred during the last days of the month and the beginning of the subsequent month shall be taken into account for computation of period up to 7 days).
138. REs shall not offset the cash transactions against one another. Where there are deposit and withdrawal transactions, the amount shall be aggregated.
139. Transactions referred to under Sections 137 and 138 include cash contra transacted from an account to different account(s) over the counter by any customer.
140. Where an obligation to lodge a CTR (taken place within a month) arises under Section 136, the report shall be submitted to the FID within the tenth day of the succeeding month through BFIAS.
141. Submission of a CTR does not preclude the REs obligation to submit a STR.
142. Any transaction of wire transfer made pursuant to Section 75 of the Act shall be submitted to the FID through BFIAS on a monthly basis within the tenth day of the succeeding month.
143. Any transaction exceeding the threshold limit as referred to Section 136 of these Rules and Regulations made through digital payment infrastructure shall also be submitted to the FID through BFIAS.

## CHAPTER VIII: CORRESPONDENT RELATIONSHIPS

144. In relation to cross-border correspondent relationships, REs shall:

- (1) Gather sufficient information about a respondent to understand fully the nature of the respondent's business, and to determine from publicly available information the reputation of the respondent and the quality of supervision exercised on the respondent, including whether it has been subject to a ML and TF investigation or regulatory action;
- (2) Assess the respondent's AML and CFT controls having regard to AML and CFT measures of the country or jurisdiction in which the respondent operates;
- (3) Obtain approval from the Senior Management before establishing new correspondent relationships; and
- (4) Clearly understand the respective AML and CFT responsibilities of each institution.

145. In relation to "payable-through accounts", REs shall satisfy themselves that the respondent:

- (1) Has performed CDD obligations on its customers that have direct access to the accounts of the REs; and
- (2) Is able to provide relevant CDD information to the REs upon request.

146. REs shall not enter into, or continue correspondent relationships with shell banks. REs shall satisfy themselves that respondents do not permit their accounts to be used by shell banks.



## **CHAPTER IX: MONEY VALUE OR TRANSFER SERVICES (MVTS)**

147. Natural or legal persons that provide MVTS shall be licensed or registered in line with the Foreign Exchange Rules and Regulations 2020 or amendments thereof. The MVTS shall comply with the fit and proper requirements issued by the Department of Foreign Exchange and Reserve Management.
148. REs offering MVTS either directly or as an agent to MVTS operators or providers shall comply with all of the relevant requirements under Chapter XI of these Rules and Regulation on wire transfers.
149. Where REs offering MVTS control both the ordering and the beneficiary side of a wire transfer, REs shall:
- (1) Take into account all the information from both the ordering and beneficiary sides in order to determine whether a STR has to be submitted; and
  - (2) Submit a STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FID.
150. Agents for MVTS providers shall maintain a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate.
151. MVTS providers that use agents shall include them in their AML and CFT programmes and monitor them for compliance with these programmes.

## **CHAPTER X: NEW PRODUCTS AND BUSINESS PRACTICES**

152. REs shall identify and assess the ML and TF risks that may arise in relation to the development of new products and business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products. The risk assessment report shall be reviewed during the onsite inspection of the RE.

153. REs shall:

- (1) Undertake the risk assessment prior to the launch or use of such products, practices, and technologies; and
- (2) Take appropriate measures to manage and mitigate any risks.

## **CHAPTER XI: WIRE TRANSFERS**

154. The requirements under this section are applicable to cross-border wire transfers and domestic wire transfers including serial payments and cover payments.
155. REs shall comply with the requirements on targeted financial sanction (TFS) in carrying out wire transfer.
156. REs shall not execute the wire transfer if it does not comply with the requirements specified in TFS.
157. REs are required to maintain all originator and beneficiary information collected in accordance with record keeping requirements under Sections 67 and 68 of the Act.

### **Ordering Institution**

#### **Cross-border wire transfers**

158. REs which are ordering institutions shall ensure that the message or payment instruction for all cross-border wire transfers irrespective of the value of transaction are accompanied by the following:
- (1) Originator information pertaining to:
    - a. The name of the originator;
    - b. The account number (or a unique reference number if there is no account number) of the originator which permits traceability of the transaction; and
    - c. Address of the originator (or in lieu of the address, date and place of birth).
  
  - (2) Required beneficiary information pertaining to:
    - a. The name of the beneficiary; and
    - b. The account number (or a unique reference number if there is no account number) relating to the beneficiary, which permits traceability of the transaction.
159. Where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file shall contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country; and ordering institutions are required to include the originator's account number or unique transaction reference number.

### **Domestic wire transfers**

160. Ordering institutions are required to ensure that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers, unless this information can be made available to the beneficiary institution and relevant authorities by other means.
161. Where the information accompanying the domestic wire transfer can be made available to the beneficiary institution and relevant authorities by other means, the ordering institution shall include only the originator's account number or if there is no account number, a unique identifier, within the message or payment form, provided that this account number or unique identifier will permit the transaction to be traced back to the originator or the beneficiary. Ordering institutions are required to provide the information within three working days of receiving the request either from the beneficiary institution or from the relevant authorities and must provide the information to law enforcement agencies immediately upon request.

### **Intermediary institutions**

162. For cross-border wire transfers, intermediary institutions shall be required to retain all originator and beneficiary information that accompanies a wire transfer.
163. Where the required originator or beneficiary information accompanying a cross-border wire transfer cannot be transmitted due to technical limitations, intermediary institutions shall be required to keep a record in accordance with record keeping requirements under Section 68 of the Act and Sections 79 to 81 of these Rules and Regulations.
164. Intermediary institutions shall be required to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack the required originator information or required beneficiary information.
165. Intermediary institutions shall be required to have effective risk-based policies and procedures for determining:
1. When to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and
  2. The appropriate follow-up actions.

### **Beneficiary institutions**

166. Beneficiary institutions shall take reasonable measures, including post-event or real-time monitoring where feasible, to identify cross-border wire transfers that lack the required originator information or required beneficiary information.
167. For all cross-border wire transfers irrespective of value of transaction, beneficiary institutions shall verify the identity of the beneficiary, if the identity has not been previously verified, and maintain this information in accordance with record keeping requirements under Sections 67 and 68 of the Act.

168. Beneficiary institutions shall have effective risk-based policies and procedures for determining:

- (1) When to execute, reject, or suspend a wire transfer lacking the required originator or required beneficiary information; and
- (2) The appropriate follow-up actions

## CHAPTER XII: RELIANCE ON THIRD PARTIES

169. REs may rely on third parties to conduct CDD or to introduce business.
170. The ultimate responsibility and accountability of CDD measures shall remain with the RE relying on the third parties.
171. REs shall have in place internal policies and procedures to mitigate the risks when relying on third parties, including those from jurisdictions that have been identified as having strategic AML and CFT deficiencies that pose a ML and TF risk to the international financial system.
172. REs shall be prohibited from relying on third parties located in the higher risk countries that have been identified as having on-going or substantial ML and TF risks.
173. The relationship between REs and the third parties (relied upon by the REs to conduct CDD) shall be governed by an arrangement that clearly specifies the rights, responsibilities and expectations of all parties. At the minimum, REs shall be satisfied that the third party:
- (1) Can obtain immediately the necessary information concerning CDD as required under Chapter VI;
  - (2) Has an adequate CDD process;
  - (3) Has measures in place for record keeping requirements;
  - (4) Can provide the CDD information and provide copies of the relevant documentation immediately upon request; and
  - (5) Is properly regulated and supervised by the respective authorities.
174. REs shall obtain an attestation from the third party to satisfy itself that the requirements in Section 173 have been met.
175. REs shall obtain written confirmation from the third party that it has conducted CDD on the customer or beneficial owner, as the case may be, in accordance with Chapter VI of these Rules and Regulations.
176. The requirements under Sections 169, 171 and 172 shall be fulfilled if the RE relies on a third party that is part of the same financial group subject to the following conditions:

- (1) The group applies CDD and record keeping requirements and AML and CFT programs in line with the requirements on these Rules and Regulations;
- (2) The implementation of those CDD and record keeping requirements and AML and CFT programs is supervised at a group level by a competent authority; and
- (3) Any higher country risk is adequately mitigated by the financial group's AML and CFT policies.

177.REs shall not rely on third parties to conduct ongoing due diligence of its customers.

### **CHAPTER XIII: NON-FACE-TO-FACE BUSINESS RELATIONSHIPS**

178. REs may establish non-face-to-face (FTF) business relationships with its customers.

179. REs developing their own non-FTF KYC are required to follow the following measures when implementing their own non-FTF KYC.

- (1) REs shall obtain approval from their Board prior to the implementation of non-FTF business relationships.
- (2) REs shall be vigilant in establishing and conducting business relationships via electronic means, which includes mobile channel and online channel.
- (3) The Board shall set and ensure the effective implementation of appropriate policies and procedures to address any specific ML/TF risks associated with the implementation of non-FTF business relationships.
- (4) REs shall ensure and be able to demonstrate on a continuing basis that appropriate measures for identification and verification of the customer's identity are as effective as that of face-to-face customer and implement monitoring and reporting mechanisms to identify potential ML/TF activities.
- (5) REs shall take measures to identify and verify the customer's identity through any of the following:
  - (1) establishing independent contact with the customer;
  - (2) verifying the customer's information against reliable and independent sources to confirm the customer's identity and identifying any known or suspected ML/TF risks associated with the customer; or
  - (3) requesting, sighting and maintaining records of additional documents required to perform face-to-face customer verifications.
- (6) REs shall ensure the systems and technologies developed and used for the purpose of establishing business relationships using non-FTF channels (including verification of identification documents) have capabilities to support an effective AML/CFT compliance programme.

180. REs shall comply with any requirements issued by the FID on the implementation of non-FTF CDD.



## CHAPTER XIV: HIGHER RISK COUNTRIES

181. REs shall be required to conduct enhanced CDD for business relationships and transactions with any person from countries identified by the FATF or the Royal Government of Bhutan as having on-going or substantial ML and TF risks.
182. Where ML and TF risks are assessed as higher risk, REs shall be required to conduct enhanced CDD for business relationships and transactions with any person from countries identified by the FATF or the Royal Government of Bhutan as having strategic AML and CFT deficiencies and has not made sufficient progress in addressing those deficiencies.
183. In addition to the enhanced CDD requirement under Section 181, REs shall be required to apply appropriate counter measures, proportionate to the risk, for higher risk countries listed as having on-going or substantial ML and TF risks, as follows:
- (1) Limiting business relationship or financial transactions with identified countries or persons located in the country concerned;
  - (2) Review and amend, or if necessary, terminate, correspondent relationships with financial institutions in the country concerned;
  - (3) Conduct enhanced external audit, by increasing the intensity and frequency, for branches and subsidiaries of the reporting institution or financial group, located in the country concerned;
  - (4) Submit a report with a summary of exposure to customers and beneficial owners from the country concerned to the FID on an annual basis; and
  - (5) Conduct any other measures as may be specified by FID.

## **CHAPTER XV: DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPS)**

184. DNFBPs shall comply with the CDD requirements set out in Chapter VI of these Rules and Regulations in the following situations:

- (1) Real estate agents- when they are involved in transactions for a client concerning the buying and selling of real estate;
- (2) Dealers in precious metals and dealers in precious stones- when they engage in any cash transaction with a customer equal to or above Nu. 300,000/-.
- (3) Lawyers, notaries, other independent legal professionals and accountants when they prepare for, or carry out, transactions for their client concerning the following activities:
  - a. buying and selling of real estate;
  - b. managing of client money, securities or other assets; - management of bank, savings or securities accounts;
  - c. organisation of contributions for the creation, operation or management of companies;
  - d. creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

185. For the purpose of Section 73 of the Act, REs that are dealer in precious metals or dealer in precious stones shall submit STR to the FID if the transaction is in cash and exceeds Nu. 300,000/- or the equivalent in Ngultrum or other currency.

## **CHAPTER XVI: REPORTS OF PHYSICAL CURRENCY MOVEMENTS**

### **Movement of physical currency**

186. Any person leaving or entering Bhutan with an amount in cash, bearer negotiable instruments (BNIs) or both, with the value exceeding USD 10,000/- or more shall declare such amount to Customs at the point of entry or exit.
187. For the purposes of this Chapter, a person leaves or enters Bhutan with cash or BNIs if the person brings the cash or BNIs with him in his accompanying baggage or on any conveyance or otherwise.
188. Any person who sends or receives into or out of Bhutan through a postal, courier or freight forwarding services, or by any other means, any cash, BNIs or both with a value that exceeding or equivalent to USD 10,000/- shall declare such amount to the Customs using a currency declaration form.
189. When the competent authority discovers a false declaration or disclosure of currency or BNIs or a failure to declare or disclose them, the competent authorities can obtain further information from the carrier with regard to the origin of the currency or BNIs, and their intended use.
190. Information obtained through the declaration process under Sections 186 and 188 of these Rules and Regulations shall be forwarded by the customs authority to the FID on a weekly basis. The report should be sent to the Head of the FID.
191. The Royal Bhutan Police (RBP) shall assist the customs authority in carrying out its duties as mentioned under this Chapter.
192. A domestic level coordination among DRC, Department of Immigration, DFERM-RMA, the FID and the police shall be in place to monitor and implement this Chapter.
193. The FID shall retain any declaration made pursuant to this Chapter for no less than ten years from the date of declaration.

### **Search of persons and goods**

194. The customs authority shall at any time stop a person who is entering or leaving the Kingdom of Bhutan and carry out a search of the person or goods in their possession to ascertain if they are complying with Section 186 of these Rules and Regulations

### **Confiscation of undeclared physical currency or bearer negotiable instrument**

195. Where a person brings into or takes out of Bhutan physical currency or a BNIs in respect of which a declaration should have been made and no declaration or false declaration or misleading declaration has been made, the physical currency or a bearer negotiable instrument shall be confiscated and may be prosecuted by the relevant agencies, if the act is deemed to be an offence under laws of the Kingdom of Bhutan.

## **CHAPTER XVII: TARGETED FINANCIAL SANCTIONS**

196. REs are required to keep updated with the current and new UNSCR published by the UNSC or its relevant Sanctions Committee as published in the United Nations (UN) website.

### **Maintenance of Sanctions List UNSCR List**

197. REs are required to keep updated with the list of countries and persons designated as restricted end-users and prohibited end-users, in accordance with the relevant UNSCR relating to:

- (1) prevention of proliferation of weapons of mass destruction (WMD)
- (2) upholding of peace and security, through prevention of armed conflicts and human rights violations as published in the UN website, and as and when there are new decisions by the UNSCR or its relevant Sanctions Committee.

198. REs are required to maintain a sanctions database on the UNSCR List.

199. REs must ensure that the information contained in the sanctions database is updated and effected without delay upon the publication of the UNSC or its relevant Sanctions Committee's designation in the UN website.

200. REs may refer to the Consolidated UNSCR List published in the UN website at <https://www.un.org>

201. The UNSCR List shall remain in the sanctions database until the delisting of the designated country or person or specified entities by the UNSCR or relevant Sanctions Committee is published in the UN website.

### **Domestic Sanction List**

202. REs are required to keep updated with the Domestic List as and when published in the website of the Ministry of Home and Cultural Affairs.

203. REs are required to maintain a sanctions database on the Domestic List.

204. REs must ensure that the information contained in the sanctions database is updated and effected without delay upon publication in the website of the Ministry of Home and Cultural Affairs.

205. The Domestic List shall remain in the sanctions database until the delisting of the specified entities or person is published in the website of the Ministry of Home and Cultural Affairs.

### **Other requirements**

206. REs must ensure that the information contained in the sanctions database is

comprehensive and easily accessible by its employees at the head office, branch, subsidiary and where relevant, to the outsourced service providers or agents.

### **Sanctions Screening – Customers**

207. REs are required to conduct sanctions screening on existing, potential or new customers against the Domestic List and UNSCR List. Where applicable, screening shall be conducted as part of the CDD process and on-going due diligence.

208. REs are required to screen its entire customer database (including dormant accounts), without delay, for any positive name match against the:

- (1) Domestic List, upon publication in the website of Ministry of Home and Cultural Affairs; and
- (2) UNSCR List, upon publication of the UNSC or its relevant Sanctions Committee's designation in the UN website.

209. REs in the insurance sector, shall conduct sanctions screening during establishing business relationships, during in-force period of the policy and before any payout.

210. When conducting the sanctions screening process, reporting institutions may perform name searches based on a set of possible permutations for each designated person or specified entity to prevent unintended omissions.

### **Dealing with False Positives**

211. REs are required to ascertain potential matches with UNSCR List or Domestic List are true matches to eliminate false positives.

212. REs are required to make further inquiries for additional information and identification documents from the customer, counterparty or credible sources to assist in determining whether the potential match is a true match.

### **Related Parties**

213. REs shall undertake due diligence on related parties.

214. In undertaking due diligence on the related parties, REs are required to examine and analyse past transactions of the specified entities and related parties, and maintain records on the analysis of these transactions.

215. In ascertaining whether an entity is owned or controlled by a specified entity, REs may refer to the Guideline on "beneficial owner", and requirements under Chapter VII of these rules and regulations in relation to CDD.

### **Freezing, Blocking and Rejecting - Customers and Related Parties**

216. REs are required to conduct the following, without delay, upon determination and confirmation of a customer's identity as a designated person/entity and/or related parties

- to prevent the dissipation of the property:
- (1) freeze the customer's property as imposed by Section 83 or 96 of the Act; or
  - (2) block transactions (where applicable).

217. REs shall reject a potential customer, when there is a positive name match.

218. The freezing of properties, or blocking of transactions, as the case may be, shall remain in effect until the designated country or person or entity is removed from the Domestic List or UNSCR List.

### **Allowable Transactions**

219. Any dealings with frozen properties, whether by the designated country, person, specified entity, related party, or any interested party, requires prior written authorisation from the Minister of Home and Cultural Affairs, the UNSCR or its relevant Sanctions Committee as applicable.

220. The frozen properties may continue receiving deposits, dividends, interests, bonus, premiums/contributions or other benefits. However, such funds and benefits must remain frozen as long as the designated country, person or specified entity continues to be listed under the Domestic List and UNSCR List.

### **Exemption for Basic and Extraordinary Expenditures**

221. REs may advise the designated person, specified entity, a related party or any interested party of the frozen properties, or to the blocked or rejected transactions, to make an application to the Department of Law and Order, the UNSCR or its relevant Sanctions Committee as applicable, for exemptions on basic and extraordinary expenditures.

222. REs shall only proceed with payments for basic and extraordinary expenditures upon receiving written authorisation from the Department of Law and Order, the UNSCR or its relevant Sanctions Committee as applicable.

### **Exemption for Payments Due under Existing Contracts**

223. REs may advise the designated person, related party or any interested party of the frozen property, or to the blocked or rejected transaction, to make an application to the Department of Law and Order, the UNSC or its relevant Sanctions Committee as applicable to allow payments due under contracts entered into prior to the designation.

224. REs shall only proceed with the payments due under existing contracts upon receiving prior written authorisation from the Department of Law and Order, the UNSC or its relevant Sanctions Committee as applicable.

## **Reporting on Positive Name Match**

### **Reporting upon Determination of a Positive Name Match**

225. REs are required to report to the FID within 24 hrs, on any detection, freezing, blocking or rejection actions undertaken with regard to any property of any specified entity and/or related party.

### **Periodic Reporting on Positive Name Match**

226. REs that has reported positive name matches and are in possession or in control of frozen or blocked properties of any designated person or specified entity and/or related party are required to report any changes to those funds, other financial assets and economic resources to the FID.

227. Notwithstanding Section 226, reporting entities are not required to submit periodic reporting on positive name matches involving customers who conduct one-off transactions and where the customer does not maintain an account with the reporting institution.

### **Reporting of Suspicious Transaction**

#### **On Related Transactions**

228. REs are required to submit a suspicious transaction report, upon determination of any positive match or has reason to suspect that the account or transaction is related or linked to, or is used or intended to be used for or by any designated country, person, specified entity or related party.

229. REs are also required to submit a suspicious transaction report on any attempted transactions undertaken by designated countries, persons, specified entities or related parties.

#### **On Name Match with Other Unilateral Sanctions Lists**

230. REs may consider submitting a suspicious transaction report if there is any positive name match with individuals or entities listed in other unilateral sanctions lists.

### **Imposition of New Measures**

231. In the event the UNSC or its relevant Sanctions Committee imposes new measures relating to:

- (1) the prevention of proliferation financing (PF) or proliferation of weapons of mass destruction (WMD),
- (2) upholding of peace and security, and prevention of conflicts and human rights violations reporting entities are required to adhere to such measures as specified by FID.

232. REs are required to implement Chapter VI on AML/CFT Compliance Programme for the purpose of countering PF and proliferation of WMD under this section.



233. The requirement in Section 232 is not applicable to general insurers.

234. RE that fails to comply with the requirements of this Chapter commits an offence and is subject to the penalties and sanctions referred to in Section 172 of the Act and Section 254 of these Rules and Regulations.

## CHAPTER XVIII: OFFENCES

### Provision of false or misleading information

235. A person commits an offence if the person:

- (1) Produces to REs false or misleading information; or
- (2) Produces to REs a false or misleading document; or
- (3) Forges a document for use in a customer identification procedure of REs; or
- (4) Obtains or receives a financial service using a false customer name.

### Penalty

236. A person commits an offence under Section 235 of these Rules and Regulations shall be liable on conviction to a felony of third degree or fourth degree as per the Penal Code of Bhutan and other relevant laws.

### Structuring

237. A person (the *first person*) commits an offence if:

- (1) The first person causes another person to become, a party to 2 or more non-reportable transactions; and
- (2) Having regard to:
  - a. The manner and form in which the transactions were conducted, including the matters to which Section 239 applies; or
  - b. Any explanation made by the first person as to the manner or form in which the transactions were conducted; or
  - c. It shall be reasonable to conclude, having regard to evidence dealing with the matters referred to in Section 237 and any other relevant matter, that the first person conducted, or caused the transactions to be conducted, in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that the money or property involved in the transactions was transferred in a manner and form that would not give rise to a threshold transaction that would have been required to have been reported under Section 74 of the Act and Section 136 of these Rules and Regulations.

### Penalty

238. A person who commits an offence under Section 237 of these Rules and Regulations shall be liable as per the Penal Code of Bhutan and other relevant laws.

239. It is a defense under Section 237 if the first person proves that they did not conduct the transactions, or cause the transactions to be conducted, as the case may be, for the sole or dominant purpose of ensuring, or attempting to ensure, that the money or property involved in the transactions was transferred in a manner and form that would not give rise to a threshold transaction that would have been required to have been reported under Section 74 of the Act and Section 136 of these Rules and Regulations.

240. The following matters shall be relevant for reaching a reasonable conclusion as

stipulated under Section 237:

1. The value of the money or property involved in each transaction;
2. The total value of the transactions;
3. The period of time over which the transactions took place;
4. The interval of time between any of the transactions; and
5. The locations at which the transactions took place.

241. Non-compliance to the provision of Sections 43 to 76 and Sections 82 to 86 shall be given a grace period of 30 days and thereafter any non-compliance after the grace period shall be imposed a fine of Nu. 10,000/- per day for a maximum of another 90 days. If the REs still continues to be non-compliant then a fine up to Nu. 10,000,000/- shall be imposed and shall lead to suspension of business license.

242. Non-compliance to the provision of Chapter VI shall be given a grace period of 30 days and thereafter any non-compliance after the grace period shall be imposed a fine of Nu. 10,000/- per day for a maximum of another 90 days. If the REs still continues to be non-compliant then a fine up to Nu. 10,000,000/- shall be imposed and shall lead to suspension of business license.

243. Non-compliance to reports of suspicious transactions under Section 130 shall be liable to a fine equivalent to 100% of the STR not reported, subject to a ceiling of Nu. 10,000,000/- or whichever is higher.

244. Failure to report cash and other transactions under Sections 136, 142 and 143 or late reporting shall be liable to a fine of Nu. 10,000/- per day from the date of violation until rectified.

245. In case of wrong reporting of cash and other transactions under Sections 136, 142 and 143, REs shall be liable to a fine of Nu. 100,000/- thereafter provide 15 days for rectification. If not rectified within the specified time period, a fine of Nu. 10,000/- per day shall be imposed from the date of violation until rectified.

246. Non-compliance to the provisions of Chapter IX, XII and XV shall be given a grace period of 30 days and thereafter any non-compliance after the grace period, REs shall be imposed a fine of Nu. 10,000/- per day until rectified.

247. Non-compliance to the provision of Chapter XI and XIII shall be liable for Nu. 100,000/- with the grace period of 30 days and thereafter shall be imposed a fine of Nu. 10,000/- per day until rectified.

248. The maximum value of a fine that may be imposed by a supervisor pursuant to Section 172 (2) of the Act is Nu. 10,000,000/-. Where a person who has been subjected to a penalty on a previous occasion, subsequently fails to conform to a requirement on any further occasion, such person shall be liable additional penalty in a sum consisting of

double the amount imposed as a penalty on the first occasion and for each non-compliance after such first occasion.

249. A person who breaches Chapter III commits an offence and is liable, upon conviction in a court of law, to an appropriate penalty.

250. Failure to comply with a notice issued pursuant to Section 31 (3), (4) or (5) of the Act shall be punishable by a penalty of up to Nu 10,000/- per day from the date of violation until the notice is complied with.

251. Failure to comply with a temporary freezing notice issued pursuant to Section 32 of the Act shall be punishable by an administrative penalty amounting to Nu. 10,000,000/- or three times the amount frozen, whichever is higher.

252. A legal person who commits an offence under Section 159 of the Act shall be liable on conviction to pay a fine of not less than twice the value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or Nu. 10,000,000/-, whichever is higher and cancellation of the license.

253. REs or an employee or director of REs that commit an offence against Section 169 of the Act shall be liable to an administrative penalty of Nu 10,000/- per day from the date of violation until rectified.

254. The maximum administrative penalty that may be imposed by a Supervisor pursuant to Section 172 (2) of the Act is Nu 10,000,000/-.

255. For the purposes of Section 176 of the Act the maximum fine that may be imposed for an offence against Section 175 of the Act is Nu 10,000,000/-.

256. For the purposes of Section 170 of the Act the penalties applicable to an offence against Section 171 of the Act shall apply to REs or a person who is a member of the board of directors of REs or who is an employee of REs at Senior Management level who is found to have committed an offence against Section 169 of the Act.

### **Recording keeping penalty**

257. A person shall be guilty of the offence of the felony of the fourth degree if he destroys, conceals, mutilates or improperly alters any record or account required to be kept or maintained under any of the provisions of the Act or of these Rules and Regulations.

258. A person shall be guilty of the offence of petty misdemeanor if he sends or attempts to send or conspires with any other person to send out of Bhutan any such record or account, with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under the Act or of these Rules and Regulations.

259. Non-compliance to the provision of record keeping requirement under the Act or of these Rules and Regulations shall be liable for a fine of Nu. 100,000/- with the grace period of 30 days and thereafter an additional fine of Nu. 10,000/- per day shall be imposed until the records are kept as stipulated.

260. Non-compliances with any other requirements specified in these Rules and Regulations shall be liable as per the relevant laws of Bhutan.

## CHAPTER XIX: INVESTIGATIONS AND ENQUIRIES UNDER CHAPTER VII OF THE ACT

261. For the purposes of enforcing the provisions of Chapter VII of the Act, an authorized officer may exercise the powers set out in this Chapter for the purpose of identifying, quantifying or tracing property that is suspected of being subject to confiscation pursuant to Chapter VII of the Act.

262. The powers conferred upon authorized officers under this Chapter are in addition to any other powers that may be exercised by an authorized officer under relevant legislation.

### Search powers

263. An authorized officer may search a person or land or premises and seize property that is suspected to be either the proceeds or instrumentality of a predicate offence or a document that is relevant to identifying, locating or quantifying property that may be the proceeds or instrumentality of a predicate offence, but only if the entry, search or seizure is:

1. with the consent of the person or occupier of the land or premises; or
2. under a warrant issued under Section 265.

264. Where an authorized officer has reasonable grounds for suspecting that there is, or maybe within the next 72 hours:

1. the proceeds or instrumentality of a predicate offence; or
2. a document that is relevant to identifying, locating or quantifying property that may be the proceeds or instrumentality of a predicate offence.

Upon a person or upon land or upon premises, the authorized officer may:

3. lay before a [court] an [information/affidavit] setting out those grounds; and
4. apply for the issuance of a warrant to search the person or the land or premises for property that may be the proceeds or instrumentality of a predicate offence.

265. Where an application is made pursuant to Section 264 for a warrant to search a person or land or premises the court may issue a warrant authorizing the authorized officer (whether or not named in the warrant), with such assistance, and by such force as is necessary and reasonable:

1. to search the person or land or premises for property that may be the proceeds or instrumentality of a predicate offence; and
2. to seize property found in the course of the search that the authorized officer believes on reasonable grounds to be property that may be the proceeds or instrumentality of a predicate offence.

266. Where property is seized under this Chapter, the authorized officer and the agency of which he is a member shall arrange for the property to be kept until it is dealt with in accordance with the Act or these Rules and Regulations and shall take all reasonable steps to preserve the property.

267. Where property has been seized under this Chapter, a person who claims an interest in the property may apply to the [court] for an order that the property be returned to the person.

268. Where an application is made under Section 267 and the court is satisfied that:

1. the person is entitled to possession of the property;
2. that the property is not an instrumentality or the proceeds of a predicate offence; and
3. the property is not required for the purposes of an investigation or application pursuant to the Act.

The court may order the authorized officer or enforcement authority to return the property to the person.

### **Production orders**

269. Where a person has either been convicted of a predicate offence or is suspected on reasonable grounds to have committed a predicate offence, an authorized officer may apply to the [court] for an order under subsection 265 (1) against any person suspected on reasonable grounds to be in possession of a document or documents that is relevant to identifying, locating or quantifying property that may be the proceeds or instrumentality of the predicate offence.

270. Where an application is made under Section 269 for an order against a person, the court may make an order that the person:

1. produces to the authorized officer any documents that is relevant in identifying, locating or quantifying property that may be proceeds or instrumentality of the predicate offence that are in the person's possession or control;
2. make available to the authorized officer for inspection any documents that are relevant in identifying, locating or quantifying property that may be proceeds or instrumentality of the predicate offence that are in the person's possession or control.

271. An order pursuant to Section 270(1) may not be made against a financial institution of the sort referred to in Section 187 (11) (a) of the Act in relation to the original accounting records of the financial institution

272. An order that a person produce a document or documents to an authorized officer shall specify the time and the place that the document is or the documents are to be produced.

273. An order that a person make a document or documents available to an authorized officer for inspection shall specify the time or times when the document is or the documents are

to be made available.

274. Where a document is produced to an authorized officer pursuant to an order under this Chapter, the authorized officer may do one or more of the following:

1. inspect the document; or
2. take extracts from the document; or
3. make copies of the document; or
4. retain the document if, and for so long as, retention of the document is necessary for the purposes of the Act and this Rules and Regulations.

275. Where a document is made available to an authorized officer for inspection pursuant to an order under this Chapter, the authorized officer may do any one or more of the following:

1. inspect the document; or
2. take extracts from the document; or
3. make copies of the document.

276. Where a person produces or makes available a document pursuant to an order under this Chapter, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against subsection 44 (1).

277. A person is guilty of an offence under these Rules and Regulations, where a person is required by a production order to produce a document to an authorized officer or make a document available to an authorized officer for inspection, if the person:

1. contravenes the order without a reasonable excuse; or
2. in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without:
  - a. indicating to the authorized officer to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
  - b. providing correct information to the authorized officer if the person is in possession of, or can reasonably acquire, the correct information.

278. An offence against Section 277 is punishable by as per the relevant provisions of the Penal Code of Bhutan.

### **Examination orders**

279. Where a freeze order pursuant to Section 126 of the Act is in force the court that made the freeze order may, upon the application of an enforcement authority, make an order for the examination under oath of any person including:

1. a person whose property is, or a person who has or claims an interest in property that is, the subject of the freeze order; or



2. a person who is suspected to have committed a predicate offence relating to the freeze order; or
3. the spouse.

280. Any document produced or an answer given in an examination pursuant to Section 279 is not admissible as evidence in civil or criminal proceedings against the person who gave the answer or produced the document except:

1. in criminal proceedings for giving false or misleading information; or
2. in proceedings on an application under Chapter VII of the Act; or
3. in proceedings ancillary to an application under the Act; or
4. in the case of a document- in civil proceedings for or in respect of a right or liability it confers or imposes.

## **CHAPTER XX: GENERAL PROVISION**

281. In addition to the powers conferred to LEAs under Sections 162 and 163 of the Act, all LEAs shall have investigative powers in ML matters. LEAs shall include Department of Revenue and Customs, Bhutan Narcotics Control Authority, Department of Immigration, and any other agencies specified by the FID from time to time.

## DEFINITIONS

1. **Account** has the same meaning as Section 187 (1) of AML and CFT Act 2018.
2. **AML and CFT Program** is short for an anti-money laundering and counter the financing of terrorism program established in accordance with Section 54 of the Act and this Rules and Regulations.
3. **Agent** means any natural or legal person providing financial services, MVTs on behalf of a financial institution, MVTs provider, whether by contract with or under the direction of the MVTs provider.
4. **Authorisation** as used in Chapter XVIII means a permission granted by the DLO to undertake an act or make an omission that is otherwise prohibited by this Act and can include conditions imposed on the permission.
5. **Bearer negotiable instrument** means:
  1. a bill of exchange; or
  2. a cheque; or
  3. a promissory note; or
  4. a bearer bond; or
  5. a traveller's cheque; or
  6. a money order, postal order or similar order; or
  7. a bearer negotiable instrument not covered by any of the above subsections.
6. **Beneficiary** refers to the natural or legal person or legal arrangement who is identified by the originator as the receiver of the requested wire transfer.
7. **Beneficial owner** has the same meaning as Section 187(5) of AML and CFT Act 2018.
8. **Cash or other transaction** means:
  1. a transaction involving the transfer of physical currency; or
  2. a transaction involving the transfer of money in the form of e-currency.
9. **Company** has the same meaning as in the Companies Act of the Kingdom of Bhutan 2016 and amendments thereof.
10. **Consular officer** has the same meaning as in Article 1(1)(d) of the Vienna Convention on Consular Relations, of 24 April 1963.
11. **Correspondent relationship** means a relationship that involves the provision of banking or currency or value transfer services by one financial institution (the “**correspondent**”) to another financial institution (the “**respondent**”) where:
  1. the correspondent carries on a banking or currency or value transfer business at or through a permanent place of business in one country; or

2. the respondent carries on a banking or currency or value transfer business at or through a permanent place of business in another country; or
  3. the relationship between the correspondent and the respondent relates, in whole or in part, to the provision of banking or currency or value transfer services between those permanent places of business.
12. **Country** means the Kingdom of Bhutan or a foreign country.
13. **Crew service** means a service providing:
1. flight or cabin crew for a vessel or aircraft; or
  2. a person to travel on board a vessel or aircraft for any purpose relating to the vessel or aircraft's operation; or
  3. a person to travel on board a vessel or aircraft to examine the qualifications or competency of flight or cabin crew.
14. **Cross-border wire transfer** refers to any wire transfer where the ordering financial institution and beneficiary financial institution are located in different countries. This term also refers to any chain of wire transfer in which at least one of the financial institutions involved is located in a different country.
15. **Designated non-financial businesses and professions** (DNFBPs) has the same meaning as Section 187 (7) of the AML and CFT Act 2018.
16. **Domestic wire transfer** refers to any wire transfer where the ordering financial institution and beneficiary financial institution are located in the same country. This term therefore refers to any chain of wire transfer that takes place entirely within the borders of a single country, even though the system used to transfer the payment message may be located in another country.
17. **E-currency** means an internet-based, electronic means of exchange that is:
1. known as any of the following:
    - a. e-money; or
    - b. digital currency; or
    - c. a name specified by the RMA.
  2. backed either directly or indirectly by:
    - a. precious metal; or
    - b. bullion; or
    - c. a form of holding or transferring value.
  3. issued by or under the authority of a government body.
18. **Financial group** means a group that consists of a parent company or of any other type of legal person exercising control and coordinating functions over the rest of the group for the application of group supervision under the Core Principles, together with branches and/or subsidiaries that are subject to AML and CFT policies and procedures at the group level.
19. **Foreign company** has the same meaning as in the Companies Act 2000.
20. **Foreign counterparts** refer to foreign competent authorities that exercise similar responsibilities and functions in relation to the cooperation which is sought, even where such foreign competent authorities have a different nature or status (e.g., depending on the country, AML and CFT supervision of certain financial sectors may be performed by a supervisor that also has prudential supervisory responsibilities or by a supervisory

unit of the FID).

21. **Freeze** means to prohibit the transfer, conversion, disposition or movement of any property, equipment or other instrumentalities on the basis of, and for the duration of the validity of, an action initiated by a competent authority or a court under a freezing mechanism, or until a forfeiture or confiscation determination is made by a competent authority.
22. **Funds transfer** means the series of transactions beginning with the issue of the originator's payment instruction to the sending bank and completed by acceptance of payment instruction by the beneficiary's bank for the purpose of making payment to the beneficiary of the instruction.
23. **Government body** means:
  1. the government of a country; or
  2. an agency or authority of the government of a country; or
  3. the government of part of a country; or
  4. an agency or authority of the government of part of a country.
24. **International funds transfer** means any movement of funds into or out of Bhutan.
25. **Legal arrangements** refer to express trusts or other similar legal arrangements.
26. **Legal persons** refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevant similar entities.
27. **Money Laundering and Terrorist Financing risk** means the risk that a reporting entity may reasonably face that the provision by the reporting entity of designated services might (whether inadvertently or otherwise) involve or facilitate money laundering or the financing of terrorism.
28. **Money or value transfer service** means a financial service that accepts cash, cheques, other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money/value transfer service belongs. Transactions performed by such services can involve one or more intermediaries and a third-party final payment.
29. **Ordering financial institution** refers to the financial institution which initiates the wire transfer and transfers the funds upon receiving the request for a wire transfer on behalf of the originator.
30. **Originator** refers to the account holder who allows the wire transfer from that account, or where there is no account, the natural or legal person that places the order with the ordering financial institution to perform the wire transfer.
31. **Payment instruction** means an unconditional instruction issued by an originator in writing or transmitted electronically to a financial institution to affect a funds transfer for a certain sum of money expressed in Ngultrum or any other currency:
  1. to the designated account of a designated beneficiary by debiting correspondingly an account of the originator; or
  2. directly to a designated beneficiary who does not have an account with the recipient financial institution by debiting correspondingly an account of the originator; or

3. to the designated account of a designated beneficiary with the recipient financial institution having received the funds from the originator; or
  4. directly to a designated beneficiary who does not have an account with the recipient financial institution having received the funds from the originator.
32. **Person** means any natural or legal person including an entity.
33. **Politically exposed persons (PEPs)** refer to:
1. foreign PEPs- individuals who are or who have been entrusted with prominent public functions by a foreign country. For example, Heads of State or Government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations and important political party officials; or
  2. domestic PEPs- individuals who are or have been entrusted domestically with prominent public functions. For example, Heads of State or Government, senior politicians, senior government, judiciary or military officials, senior executives of state-owned corporations and important political party officials; or
  3. persons who are or have been entrusted with a prominent function by an international organization which refers to members of senior management. For example, directors, deputy directors and members of the board or equivalent functions.
- The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.
34. **Precious metal** means:
1. Gold; or
  2. Silver; or
  3. Platinum; or
  4. Palladium; or
  5. Iridium; or
  6. Osmium; or
  7. Rhodium; or
  8. a metal specified in the Rules and Regulations; or
  9. any alloy or other substance containing:
    - a. gold; or
    - b. silver; or
    - c. platinum; or
    - d. palladium; or
    - e. iridium; or
    - f. osmium; or
    - g. rhodium; or
    - h. a metal specified in the Rules and Regulations.
35. **Related party** refers to: (a) a person related to the properties or funds that are wholly or jointly owned or controlled, directly or indirectly, by a specified entity; and (b) a person acting on behalf or at the direction of a specified entity.
36. **Relevant foreign registration body** means, in respect of a registered foreign company or an unregistered foreign company, any government body that was responsible for the formation, incorporation or registration of that company in its country of formation,

incorporation or registration.

37. **Representative office** means a business office that is established by a body corporate in a foreign country, where the body corporate is not licensed to operate, to conduct marketing operations.
38. **Satisfied** where reference is made to REs being satisfied as to a matter, REs should have reasonable grounds to support its assessment of the matter and must be able to justify its assessment to the supervisory authority.
39. **Senior Management** refers to any person(s) having authority and responsibility for planning, directing or controlling the activities of REs including the management and administration of REs.
40. **Shell bank** has the same meaning as Section 187 (22) of AML and CFT Act 2018.
41. **Signatory** in relation to an account with an account provider, means the person, or one of the persons, on whose instructions (whether required to be in writing or not and whether required to be signed or not) the account provider conducts transactions in relation to the account.
42. **Supervisor** means AML and CFT Supervisor as prescribed in Section 39 of AML and CFT Act 2018.
43. **Trust** means a person in the capacity of trustee or, as the case requires, a trust estate.
44. **Trustee** means an individual or organization which holds or manages and invests assets for the benefit of another.
45. **Value** in relation to transferred property, means the market value of the property as at the time of the transfer. In working out the market value of the property, disregard anything that would prevent or restrict conversion of the property to money.