



## **ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM RULES AND REGULATIONS 2018**

**In exercise of the powers conferred by Section 183 of the Anti- Money laundering and Countering of Financing of Terrorism (AML/CFT) Act 2018 hereby issues this rules and regulations to all the Reporting Entities in Bhutan as specified in Section 50 of the AML/CFT Act 2018. This rules and regulations shall come into force from 1<sup>st</sup> July 2018 and supersede the existing Anti- Money laundering and Countering of Financing of Terrorism Regulations 2015. This rules and regulations shall be amended in part or as a whole when the RMA feels the need to affect such changes.**

## **CHAPTER 1 - PRELIMINARY**

### **INTRODUCTION**

1. Money laundering and terrorism financing (ML/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 institutions to launder illicit funds and use them as conduits for ML/TF activities. This rules and regulations are necessary for the implementation of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2018 (the Act) and the creation of an effective legal framework to counter money laundering and the financing of terrorism and apply international best practices and standards.

### **SHORT TITLE AND COMMENCEMENT AND EXTEND**

2. This rule and regulation shall:
  - (1). Be cited as the AML and CFT Rules and Regulations, 2018
  - (2) Come into force with effect from 1<sup>st</sup> July 2018.

## **CHAPTER 2 –FINANCIAL INTELLIGENCE DEPARTMENT**

### **CONFIDENTIALITY AND PROTECTION OF INFORMATION**

3. 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 and seconded assigned to the Financial Intelligence Department (FID) as per to Section 27 and 28 of the Act or who are engaged as consultants or contractors by the FID shall disclose or communicate to any person any information acquired by them whilst working for the FID.

4. The FID shall establish rules to provide for the security and confidentiality of information held by the FID that shall include provisions dealing with handling, storage, dissemination, protection of and access to its information.
5. The FID shall ensure that FID staff members appointed or seconded pursuant to sections 27 or 28 of the Act (or laws and rules and regulations that may previously have applied to FID staff) are subject to appropriate character checks and security clearances and that they are trained to understand their responsibilities in the handling of sensitive and confidential FID information.
6. The FID shall ensure that its premises are secure and that only authorized persons are able to gain access to them or to its data.

#### RECEIPT OF INFORMATION TO/FROM FOREIGN COUNTERPARTS

7. For the purposes of implementing Section 31 of the Act, a foreign counterpart means a foreign FIU that is either a member of the Egmont Group or a foreign FIU with which the FID has a memorandum of understanding in place.
8. 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, relating to the use to which the foreign FIU may put the information, are in place.
9. The FID may request a foreign FIU for information where if it 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

10. For the purposes of discharging the function imposed upon it by s.37(4) of the Act the FID may 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 reporting entities without any supporting analysis.
11. The decision to disseminate information in accordance with s.37(4) of the Act shall be at the discretion of the Head of the FID or members of FID staff authorized by the

Head of the FID. Such decisions may be made spontaneously by the FID or upon receipt of a request for FID information from a law enforcement agency.

## TEMPORARY FREEZING NOTICES

12. A notice issued under section 32 of the Act may be served by:

- (1). Delivering it to the office or business premises of the addressee; or
- (2). By transmitting it via email or facsimile machine to the office or business premises of the addressee.

## **CHAPTER 3 – SUPERVISORS**

### DUTIES OF SUPERVISORS

13. The general obligation imposed upon supervisors at section 38 of the Act includes ensuring that the reporting entities subject to their supervision comply with the preventative measures requirements set out in Chapter V of the Act and the obligations imposed on reporting entities relating to targeted financial sanctions in Chapter VI of the Act.

### SUPERVISORS TO TAKE A RISK BASED APPROACH

14. For the purpose of complying with section 46 of the Act, supervisors should determine the frequency and intensity of onsite and offsite AML/CFT supervision of reporting entities upon the basis of:

- (1) The ML/TF risks and the policies, internal controls and procedures associated with the reporting entity (or if the reporting entity is part of a group, the internal controls and procedures associated with the group), as identified by the supervisor's assessment of the reporting entity's or group's risk profile;
- (2) The ML/TF risks present in the country; and

(3). The characteristics of the reporting entity or group, in particular the diversity and number of reporting entities and the degree of discretion allowed to them under the application of a risk based approach to the control of their ML/TF risks.

## COOPERATION BETWEEN SUPERVISORS

15. Supervisors may, subject to any laws relating to their power to exchange or release information, exchange information with other supervisors, both domestic or foreign, for the purpose of facilitating AML/CFT supervisory activities.
16. The information that may be shared with another supervisor pursuant to section 14 of this rules and regulation includes information that is currently held by the supervisor, or information that the supervisor would be entitled to obtain from a reporting entity pursuant to section 47 of the Act. Without limiting the generality of this sharing power, the types of information that might be shared include:
  - (1). regulatory information such as information on the domestic regulatory systems that are in place and general information on the financial sectors;
  - (2) prudential information such as information on the reporting entity's business activities, beneficial ownership, management and fit and properness; and
  - (3) AML/CFT information such as internal AML/CFT procedures and policies of reporting entities, customer due diligence information, customer files and information relating to transactions.
17. Supervisors may conduct enquiries on behalf of foreign counterparts and may request their foreign counterparts to conduct enquiries on their behalf. Assistance should be provided to foreign counterparts, particularly for the purpose of conducting effective group supervision.
18. Where a supervisor obtains information from a foreign counterpart it should ensure that it is authorized by that counterpart before the information is disseminated or used for a supervisory or other purpose. Where a supervisor is obliged by law to make use of such information without authorization it should promptly notify its counterpart of such obligations.
19. The Financial Intelligence Department shall supervise accountants registered with the Royal Audit Authority for the purposes of section 38 and section 43 of the Act.
20. For the purposes of the Act the supervision by the Jabmi Tshogdey of lawyers registered pursuant to the Jabmi Act and the supervision by the Financial Intelligence

Department of licensed accountants registered by the Ministry of Economic Affairs shall be in respect of the following activities that may be 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;
- (4) creation, operation or management of legal persons or arrangements, and buying and selling business entities.

## **CHAPTER 4 – REPORTING ENTITIES**

### MANAGEMENT OF ML AND TF RISKS

21. The risk based approach to be undertaken by reporting entities 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 employed, in accordance with the Act and this rules and regulations
22. When a reporting entity 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/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; and
  - (4) Have an appropriate mechanism to provide up-to-date risk assessment information to its supervisory authority

### RISK PROFILING

23. Reporting entities shall conduct risk profiling on their customers.

24. Risk profiles shall include the following:

- (1) An assessment of customer risk (e.g. resident or non-resident, type of customers, occasional or one-off, legal person structure, types of PEP, types of occupation);
- (2) Geographical location of business or country of origin of customers;
- (3) Products, services, transactions or delivery channels (e.g. cash-based, cross-border); and
- (4) Any other information suggesting that the customer is of higher risk.

25. Customer risk profiles should be reviewed and updated in accordance with their level of assessed ML/TF risk.

#### RISK REPORTING

26. Reporting entities 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 reporting institution's operating environment.

27. Reports under section 26 may include:

- (1) Results of AML/CFT monitoring activities carried out by the reporting entity such as level of exposure to ML/TF risks, break-down of ML/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 reporting institution; and
- (3) The implications of changes to AML/CFT laws and rules and regulations.

#### INTERNAL CONTROLS

28. Where a reporting entity is governed by a board of directors, the board shall:

- (1) Understand its role and responsibility in managing ML/TF risks faced by the reporting entity.
  - (2) Be aware of the ML/TF risks associated with business strategies, delivery channels and geographical coverage of the reporting entities' business products and services.
  - (3) Understand the AML/CFT measures required by the law, subsidiary legislation and instruments issued under this Act, and the international standards and best practices as well as the importance of implementing AML/CFT measures to prevent the reporting entity from being abused by criminals, money launderers and financiers of terrorism.
29. For the purpose of complying with the requirements of Section 54 of the Act, the board of directors of a reporting entity shall have the following roles and responsibilities:
- (1) Maintain accountability and oversight for establishing AML/CFT policies and minimum standards;
  - (2) Approve policies regarding AML/CFT measures within the reporting entity, including those required for risk assessment, mitigation and profiling, CDD, record keeping, on-going due diligence, reporting of suspicious transactions and combating the financing of terrorism;
  - (3) Establish appropriate mechanisms to ensure the AML/CFT policies are periodically reviewed and assessed in line with changes and developments in the reporting entities products and services, technology as well as trends in ML/TF;
  - (4) Establish an effective internal control system for AML/CFT and maintain adequate oversight of the overall AML/CFT measures undertaken by the reporting entity;
  - (5) Define the lines of authority and responsibility for implementing the AML/CFT measures and ensure that there is a separation of duty between 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/TF;

- (7) Assess the implementation of the approved AML/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 reporting entities operations, size of business, complexity of business operations and structure, risk profiles of products and services offered and geographical coverage.
30. Senior Management of a reporting entity is responsible for the implementation and management of AML/CFT compliance programmes pursuant to section 54 of the Act and in accordance with the reporting entity's policies and procedures, requirements of the law, rules and regulations, guidelines and the international standards and best practices.
31. The Senior Management of a reporting entity shall have the following roles:
- (1) Be aware of and understand the ML/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/CFT policies to ensure that they are in line with the risks profiles, nature of business, complexity, volume of the transactions undertaken by the reporting entity and its geographical coverage;
  - (3) Establish appropriate mechanisms and formulate procedures to effectively implement AML/CFT policies and internal controls, including the mechanism and procedures to monitor and detect complex and unusual transactions;
  - (4) Undertake review and propose the necessary enhancements to the AML/CFT policies to reflect changes in the reporting entities 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/TF risks facing the reporting entity, strength and adequacy of risk management and internal controls implemented to manage the risks and the latest development on AML/CFT which may have an impact on the reporting institution;

- (6) Allocate adequate resources to effectively implement and administer AML/CFT compliance programmes that are reflective of the size and complexity of the reporting entities operations and risk profiles;
  - (7) Appoint an Anti-Money Laundering Compliance Officer (AMLCO at senior management level at Head Office and designate an AMLCO at each branch or subsidiary;
  - (8) Provide appropriate levels of AML/CFT training for its employees at all levels throughout the organisation;
  - (9) Ensure that there is a proper channel of communication in place to effectively communicate the AML/CFT policies and procedures to all levels of employees;
  - (10) Ensure that AML/CFT issues raised are addressed in a timely manner; and
  - (11) Ensure the integrity of its employees by establishing appropriate employee assessment system.
32. The AMLCO designated pursuant to Section 57 of the Act acts as the reference point for AML/CFT matters within the reporting entity. The AMLCO shall be:
- (1) Appointed at senior management level and have sufficient stature, authority and seniority within the reporting entity to participate in and be able to effectively influence decisions relating to AML/CFT.
  - (2) A “fit and proper” person to carry out his AML/CFT responsibilities effectively.
33. For the purposes of section 32, “fit and proper” shall include minimum criteria relating to:
- (1) Probity, personal integrity and reputation; or
  - (2) Competency and capability.
34. The AMLCO must have the necessary knowledge and expertise to effectively discharge his roles and responsibilities, including being informed of the latest developments in ML/TF techniques and the AML/CFT measures undertaken by the industry.

35. Reporting entities may encourage the AMLCO to pursue professional qualifications in AML/CFT so that they are able to carry out their obligations effectively.
36. Reporting entities should ensure that the roles and responsibilities of the AMLCO are clearly defined and documented.
37. The AMLCO has a duty to ensure the following:
- (1) The reporting entity's compliance with the AML/CFT requirements;
  - (2) Proper implementation of the reporting entity's AML/CFT policies;
  - (3) The formulation of appropriate AML/CFT procedures, including CDD, record-keeping, on-going due diligence, reporting of suspicious transactions and combating the financing of terrorism, are implemented effectively;
  - (4) The AML/CFT mechanism is regularly assessed to ensure that it is effective and sufficient to address any change in ML/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 reporting entities AML/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 Financial Intelligence Department; and
  - (8) The identification of ML/TF risks associated with new products or services or arising from the reporting entities operational changes, including the introduction of new technology and processes.
38. Reporting entities are required to inform, in writing, to the FID, within ten working days, on the appointment or change in the appointment of the AMLCO, including such details as the name, designation, office address, office telephone number, fax number, e-mail address and such other information as may be required.

39. Reporting entities are required to establish an employee assessment system that is commensurate with the size of their operations and their exposure to the risk of ML/TF.
40. For the purposes of section 39 an employee assessment system shall include an evaluation of an employee's personal history including criminal record, employment and financial history and shall be periodically reviewed throughout the period of their employment by the reporting entity.
41. Reporting entities are required to conduct awareness and training programmes on AML/CFT practices and measures for their employees. Such training must be conducted regularly and supplemented with refresher courses.
42. The employees must be made aware that they may be held personally liable for any failure to observe the AML/CFT requirements.
43. The reporting entity shall make available of its AML/CFT policies and procedures to all employees and its documented AML/CFT measures must contain at least the following:
  - (1) The relevant documents on AML/CFT issued by FID, RMA or relevant supervisory authorities; and
  - (2) The reporting entities internal AML/CFT policies and procedures.
44. The training conducted for employees must be appropriate to their level of responsibilities in detecting ML/TF activities and the risks of ML/TF faced by reporting entities.
45. The employees who deal directly with the customer shall be trained on AML/CFT prior to dealing with customers.
46. The training for all employees may provide a general background on ML/TF, the requirements and obligations to monitor and report suspicious transactions to the AMLCO and the importance of CDD.
47. The training shall be provided to specific categories of employees:
  - (1) Front-Line Employees:

Front-line employees should 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 should 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 should 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) Supervisors and Managers:

The training on supervisors and managers should include overall aspects of AML/CFT procedures, in particular, the risk-based approach to CDD, risk profiling of customers, enforcement actions that can be taken for non-compliance with the relevant requirements pursuant to the relevant laws and procedures related to the financing of terrorism.

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

49. Group level compliance by financial institutions should 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.

## INDEPENDENT AUDIT FUNCTION

50. In accordance with Section 55(5) of the Act, senior management and the Board (if applicable) of a financial institution is responsible to ensure regular independent audits of the internal AML/CFT measures to determine their effectiveness and compliance with the Act, its rules and regulations, subsidiary legislations, the relevant

documents on AML/CFT issued by FID as well as the requirements of the relevant laws and rules and regulations of other supervisory authorities, where applicable.

51. The Board (if applicable) and senior management of a financial institution are required to ensure that the roles and responsibilities of the auditor are clearly defined and documented. The roles and responsibilities of the auditor shall include, at a minimum:
  - (1) Checking and testing the compliance with, and effectiveness of the AML/CFT policies, procedures and controls; and
  - (2) Assessing whether current measures are in line with the latest developments and changes to the relevant AML/CFT requirements.
52. The scope of independent audit shall include, at a minimum:
  - (1) Compliance with the Act, its subsidiary legislation and instruments issued under the Act;
  - (2) Compliance with the financial institution's internal AML/CFT policies and procedures;
  - (3) Adequacy and effectiveness of the AML/CFT compliance programme; and
  - (4) Reliability, integrity and timeliness of the internal and regulatory reporting and management of information systems.
53. The auditor shall submit a written audit report to senior management to highlight the assessment on the effectiveness of AML/CFT measures and any inadequacy in internal controls and procedures.
54. Financial institutions are required to ensure that independent audits are carried out at the institution level at least on an annual basis.
55. Financial institutions must ensure that such audit findings and the necessary corrective measures undertaken are kept with their AML/CFT records and can be provided to the FID or their supervisor if required.

## REVIEWS AND REPORTING

56. Reporting entities shall conduct reviews on the AML CFT Programs that they develop pursuant to Sections 54 of the Act on the basis of risk or when significant changes are made to their business or when any previous review is out of date.
57. Reporting entities shall notify their supervisor upon completing an assessment of their ML/TF risks or a review of any such assessment.

#### RECORD KEEPING

58. Where the FID or a law enforcement agency considers that the records of a reporting entity are, or may be, relevant to an investigation it may issue a preservation notice to the reporting entity.
59. Any documents referred to in a notice issued pursuant to section 58 shall be retained until the notice is withdrawn by the issuing authority in writing notwithstanding the requirements of Section 68(5) of the Act.
60. Reporting entities are required to ensure that all books and records referred to in Section 68 of the Act may be made available without delay to the FID, supervisors or law enforcement authorities as required by the Act, rule and regulation or other legislation.

#### MANAGEMENT INFORMATION SYSTEMS

61. Financial institutions must have in place an adequate management information system (MIS), either electronically or manually, to complement its CDD process. The MIS is required to provide the reporting entity with timely information on a regular basis to enable the reporting entity to detect irregularity and/or any suspicious activity.
62. The MIS shall be commensurate with the nature, scale and complexity of the financial institution's activities and ML/TF risk profile.
63. The MIS 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.
64. The MIS shall be able to aggregate customer's transactions from multiple accounts and/or from different systems.

65. The MIS may be integrated with the financial institution's information system that contains its customer's normal transactions or business profile, which is accurate, up-to-date and reliable.

## **CHAPTER 5 - CUSTOMER DUE DILIGENCE (CDD)**

### WHEN CDD IS REQUIRED

66. Reporting Entities shall be required to undertake CDD measures when:

- (1) Establishing business relations;
  - (2) Carrying out occasional transactions above the applicable designated threshold of Nu. 500,000 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.500,000 and above
  - (4) Carrying out occasional transactions that are wire transfers in the circumstances covered by Chapter 10 of this rule and regulation;
  - (5) There is a suspicion of ML/TF, regardless of amount; or
  - (6) The reporting entity has doubts about the veracity or adequacy of previously obtained customer identification information.
67. In relation to international funds transfers and cross border movements of cash and bearer negotiable instruments undertaken on behalf of non-account holding customers, reporting entities must obtain specified customer and beneficiary details and provide reports to the FID.

### REQUIREMENTS FOR CDD

68. Reporting Entities are required to 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 a reporting entity 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 58-60 of this rule and regulation. In the case of:

(1) An individual:

- (a) 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 (Mandatory);
- (a) Record the full name, (Mandatory);
- (c) Record the permanent and present address;
- (d) Anticipated gross annual income (Mandatory for employed individuals Government/Private);
- (e) Occupation (Mandatory);
- (f) Record the telephone number, (Mandatory for employed individuals Government/Private);
- (g) Record the Taxpayer Identification Number (if applicable), and
- (h) Obtain two recent passport sized photographs (Mandatory).

(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 Companies Registrar and retain a copy of the document;
- (c) Record the address of the partnership;
- (d) 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 partner;

- (e) Record the permanent and present address of each partner;
- (f) Record the telephone 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 financial returns for the partnership.

(3) Companies:

- (a) Name of the company and full name of each of the 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, 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 director;
- (f) Record the permanent and present address of each director;
- (g) Record the telephone number of each director;
- (h) Record the Taxpayer Identification Number of each director (if applicable);
- (i) Obtain two passport sized photographs of each director; 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 organisation and the Chief Financial Officer (CFO) (however described);
- (b) The identity of the settlor and protector of the trust; 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 assets;
- (c) A copy of the document that establishes and regulates the trust and sets out its powers
- (d) Obtain a copy of the trust registration certificate;
- (e) Record the address of the trust;
- (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 trustee;
- (g) Record the permanent and present address of each trustee;
- (h) Record the telephone number of each trustee;
- (i) Record the Taxpayer Identification Number of each trustee (if applicable),
- (j) (h) Obtain two passport sized photographs of each trustee; and
- (i) Obtain the latest financial returns for the trust or, if no return is available, an estimate on annual income.

In relation to trusts these requirements 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;
- (b) Obtain copy of resolution authorising the obtaining of the financial service;
- (c) Record the full name of office holders;
- (d) 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 office holder;
- (f) Record the permanent and present address of each office holder;
- (g) Record the telephone number of each office holder;
- (k) 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 Organisations (CSOs) registered or accredited under the Civil Society Organisations Act of Bhutan 2007 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 Organisations registered or exempted from registration in accordance with the Religious Organisations Act of Bhutan 2007 shall be regarded as Associations.

- (6) Government Bodies including entities established by the Constitution of the Kingdom of Bhutan, entities established by the 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 concerned person(s) to open the account or undertake the transaction;
- (e) Full name(s) and position(s) of authorised 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 concerned person;
- (h) Record the telephone number of each concerned person;
- (l) Record the Taxpayer Identification Number of each concerned person (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) applies to non-government entities and subsection (6) applies to government entities.

69. Reporting entities are required to:

- 1) verify that any person purporting to act on behalf of the customer (either natural person or legal persons/arrangements) is so authorised, 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 reporting entities is satisfied that it knows who the beneficial owner is.
- 3) understand and, as appropriate, obtain information on, the purpose and intended nature of the business relationship.
- 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 reporting entities 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.

70. In conducting CDD, reporting entities are required to comply with the requirements on combating the financing of terrorism under Chapter VI of the Act and any rules issued under that Chapter and these rule and regulations.

#### SPECIFIC CDD MEASURES REQUIRED FOR LEGAL PERSONS AND ARRANGEMENTS

71. For customers that are legal persons or legal arrangements (Domestic/Foreign), the reporting entities should be required to understand the nature of the customer's business and its ownership and control structure.

72. For customers that are legal persons or legal arrangements, the reporting entities should be required to identify the customer and verify its identity as required under Section 71 and through the following information:

- (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.

73. For customers that are legal persons, the reporting entities should be required to identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- (1) The identity of the natural person(s) (if any) who ultimately has a controlling ownership interest in a legal person; and
- (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.

74. For customers that are legal arrangements (Domestic/Foreign), the reporting entities should be required to identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- (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);
- (2) For other types of legal arrangements, the identity of persons in equivalent or similar positions.

## CDD FOR BENEFICIARIES OF LIFE INSURANCE POLICIES

75. In addition to the CDD measures required for the customer and the beneficial owner, reporting entities should be required to 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 to satisfy the reporting entity that it will be able to establish the identity of the beneficiary at the time of the payout;
  - (3) For both the above cases – the verification of the identity of the beneficiary should occur at the time of the payout.
76. Reporting entities should be required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the reporting entity determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it should be required to take enhanced measures which should 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

77. Reporting entities should be required to 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/TF risks are effectively managed.

78. Reporting entities should be required to adopt risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification.

#### EXISTING CUSTOMERS

79. Reporting Entities are required to apply CDD requirements to existing customers on the basis of materiality and risk.
80. Reporting Entities are required to 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.
81. In assessing materiality and risk of the existing customer under Section 66 and 67, reporting entities may consider the following circumstances:
- (1) The nature and circumstances surrounding the transaction;
  - (2) Any material change 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

82. Where a reporting entity is unable to comply with relevant CDD measures:
- (1) It should not to open the account, commence business relations or perform the transaction; or should terminate the business relationship; and
  - (2) It should consider making a suspicious transaction report in relation to the customer to the FID.

#### CDD AND TIPPING-OFF

83. In cases where reporting entities form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer, they should be permitted not to pursue the CDD process, and instead should be required to file a suspicious transaction report.

## ENHANCED AND SIMPLIFIED CDD

84. Reporting entities are required to perform enhanced CDD where the ML/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 5;
- (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 must be obtained; and
- (4) Obtaining approval from the Senior Management of the reporting entity 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.

85. In addition to section 84, reporting entities should also consider the following enhanced CDD measures in line with the ML/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.

86. Where a reporting entity, having assessed its ML/TF risks in accordance with section 52 of the Act and this rules and regulations, comes to the view that a product or activity presents a low risk of money laundering, it may apply in writing to its supervisor for authorization to apply simplified customer due diligence measures in relation to that product or activity.

87. A supervisor may permit specified, simplified customer due diligence measures if:

- (1) It is satisfied that the reporting entity has completed a satisfactory assessment of its ML/TF risks in accordance with section 52 of the Act and this 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 financial sector;
  - (2) It has consulted with the FID about the proposed simplified customer due diligence measures and the FID has agreed that the measures are appropriate under the circumstances.
88. A simplified customer due diligence measure permitted pursuant to section 87 shall be communicated to the requesting reporting entity 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.
89. A simplified customer due diligence measure permitted pursuant to section 87 may include provisions that relax or suspend requirements set out in this Part.
90. Where a simplified customer due diligence measure has been introduced by a reporting entity in accordance with section 86 the reporting entity will be required to enforce the measure as if it was a part of this rules and regulations. Failure to do so will therefore amount to an offence against s.169(2) of the Act.

#### ON-GOING DUE DILIGENCE

91. Reporting entities are required to conduct on-going due diligence on the business relationship with its 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 reporting entities 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.

92. In conducting on-going due diligence, reporting entities should 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.
93. 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/TF risks posed by the customer based on the risk profiles and nature of transactions.
94. Reporting entities should increase the number and timing of controls applied, when conducting enhanced on-going due diligence.

#### POLITICALLY EXPOSED PERSONS (PEPs)

##### FOREIGN PEPs

95. Reporting entities are required to put in place a risk management system to determine whether a customer or a beneficial owner is a foreign PEP.
96. Staff of reporting entities should obtain senior management approval before establishing (or continuing, for existing customers) a business relationship with a foreign PEP;
97. Reporting entities should take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as foreign PEPs; and
98. Should conduct enhanced CDD as set out under Section 84.

PEPs WHO ARE DOMESTIC PEPs OR PERSONS ENTRUSTED WITH A PROMINENT POSITION BY AN INTERNATIONAL ORGANIZATION

99. Reporting entities are required to 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.
100. 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, reporting entities are required to assess the level of ML/TF risks posed by the business relationship such customers.
- ~~101.~~ The assessment of the ML/TF risks, as specified under section 100, shall take into account the risk profile of the customer.
102. The requirements of enhanced CDD as set out under section 84 and ongoing due diligence as set out under section 91 must 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.
103. Reporting entities may apply CDD measures similar to other customers for domestic PEPs or persons entrusted with a prominent function by an international organisation if the reporting entities is satisfied that the domestic PEPs or persons entrusted with a prominent function by an international organisation are not assessed as higher risk.
104. In relation to life insurance policies, reporting entities are required to 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.
105. Where higher risks are identified in relation to life insurance policies, reporting entities are required to inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.

**CHAPTER 6 – TRANSACTION REPORTING**

## REPORTING MECHANISMS

106. Reporting entities are required to establish a reporting system for the reporting of suspicious transaction reports and cash transaction reports.

## SUSPICIOUS TRANSACTION REPORTS

107. Reporting entities shall ensure that information concerning any suspicious transaction that may arise during the course of business undertaken by the reporting entity is transmitted to the compliance officer.
108. The compliance officer shall ensure that a report of any suspicious transaction is made to the FID in accordance with Sections 69 – 73 of the Act using the suspicious transaction report.
109. Suspicious transaction reports shall be delivered to the FID at the Royal Monetary Authority of Bhutan in accordance with any direction issued from time to time by the Head of the FIU.
110. Reporting entities must ensure that in the course of submitting the suspicious transaction report, utmost care is taken to ensure that such reports are treated with the highest level of confidentiality. The compliance officer or a person authorized by the compliance officer has the sole discretion and independence to report suspicious transactions on behalf of a reporting entity.
111. Reporting entities are required to develop internal criteria (“red flags”) applicable to their risk profile for the purpose of detecting suspicious transactions.
112. For the purpose of developing the internal criteria referred to in section 111 Reporting entities may be guided by examples of suspicious transactions provided by the FID or other competent authorities or international organizations.
113. Reporting entities should ensure that the compliance officer maintains a complete file on all internally generated reports of suspicious transactions and any supporting documentary evidence, regardless of whether such reports have been reported pursuant to Section 69 of Act, for a period of 10 years. These records must be made available to the FID or the relevant supervisor upon request.

## CASH TRANSACTION REPORTS AND OTHER REPORTS

114. A cash transaction report pursuant to Section 74 of the Act is required for a cash transaction the value of which exceeds Nu. 500,000/-.
115. Multiple cash transactions of less than Nu. 500,000/- occurring over a period of up to 7 days but which exceed Nu. 500,000/- when added together shall be regarded as a single transaction for the purposes of complying with section 74 of the Act.
116. Reporting entities shall not offset the cash transactions against one another. Where there are deposit and withdrawal transactions, the amount must be aggregated.
117. Transactions referred under Sections 114 and 115 include cash contra transacted from an account to different account(s) over the counter by any customer.
118. Where an obligation to lodge a CTR (taken place within a month) arises under section 114 the report shall be delivered to the FID within 10th day of the succeeding month.
- 119.** Cash transaction reports shall be delivered to the FID at the Royal Monetary Authority of Bhutan in accordance with any direction issued from time to time by the Head of the FIU.
120. Submission of a cash transaction report does not preclude the reporting entities obligation to submit a suspicious transaction report where this would be appropriate.
121. Any transaction of wire transfer made pursuant to section 75 of the Act shall be reported to the FID.

## **CHAPTER 7 – CORRESPONDENT RELATIONSHIPS**

122. In relation to cross-border correspondent relationships, reporting entities are required to:
- (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/TF investigation or regulatory action;

- (2) Assess the respondent's AML/CFT controls having regard to AML/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/CFT responsibilities of each institution.

123. In relation to "payable-through accounts", reporting entities are required to satisfy themselves that the respondent:

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

124. Reporting entities shall not enter into, or continue, correspondent relationships with shell banks. Reporting institutions are required to satisfy themselves that respondent's do not permit their accounts to be used by shell banks.

### **CHAPTER 8 – MONEY VALUE OR TRANSFER SERVICES (MVTS)**

125. Natural or legal persons that provide MVTS (MVTS providers) should be required to be licensed or registered in line with Foreign Exchange Regulation 2013.

126. Reporting entities offering MVTS either directly or as an agent to MVTS operators or providers is required to comply with all of the relevant requirements under Chapter 10 of the rules and regulation on Wire Transfers.

127. Where the reporting entities offering MVTS control both the ordering and the beneficiary side of a wire transfer, reporting entities are required to:

- (1) Take into account all the information from both the ordering and beneficiary sides in order to determine whether a suspicious transaction report has to be filed; and

- (2) File a suspicious transaction report in any country affected by the suspicious wire transfer, and make relevant transaction information available to the Financial Intelligence Department.
128. Agents for MVTs providers are required to maintain a current list of its agent's accessible by competent authorities in the countries in which the MVTs provider and its agents operate.
129. MVTs providers that use agents are required to include them in their AML/CFT programmes and monitor them for compliance with these programmes.

### **CHAPTER 9 – NEW PRODUCTS AND BUSINESS PRACTICES**

130. Reporting entities are required to identify and assess the ML/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.
131. Reporting entities are required to:
- (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 the risks.

### **CHAPTER 10 – WIRE TRANSFERS**

132. The requirements under this section are applicable to cross-border wire transfers and domestic wire transfers including serial payments and cover payments.
133. Reporting entities must comply with the requirements on targeted financial sanction under Chapter 16 in carrying out wire transfer.
134. Reporting entities shall not execute the wire transfer if it does not comply with the requirements specified in this section.

135. Reporting entities are required to maintain all originator and beneficiary information collected in accordance with record keeping requirements under Sections 67 and 68 of the AML/CFT Act.

#### Ordering Institutions

##### Cross-border wire transfers

136. Reporting entities which are ordering institutions are required to 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.

137. 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

138. 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.
139. 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

140. For cross-border wire transfers, intermediary institutions are required to retain all originator and beneficiary information that accompanies a wire transfer.
141. Where the required originator or beneficiary information accompanying a cross-border wire transfer cannot be transmitted due to technical limitations, intermediary institutions are required to keep a record in accordance with record keeping requirements under Section 58-60.
142. Intermediary institutions are 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.
143. Intermediary institutions are 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 action.

#### Beneficiary Institutions

144. Beneficiary institutions are required to 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.
145. For all cross-border wire transfers irrespective of value of transaction, beneficiary institutions are required to 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.
146. Beneficiary institutions are required to 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 action.

### **CHAPTER 11 – RELIANCE ON THIRD PARTIES**

147. Reporting entities may rely on third parties to conduct CDD or to introduce business.
148. The ultimate responsibility and accountability of CDD measures shall remain with the reporting entity relying on the third parties.
149. Reporting entities 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/CFT deficiencies that pose a ML/TF risk to the international financial system.
150. Reporting entities are prohibited from relying on third parties located in the higher risk countries that have been identified as having on-going or substantial ML/TF risks.
151. The relationship between reporting entities and the third parties (relied upon by the reporting entities to conduct CDD) shall be governed by an arrangement that clearly specifies the rights, responsibilities and expectations of all parties. At the minimum, reporting entities must be satisfied that the third party:

- (1) Can obtain immediately the necessary information concerning CDD as required under Chapter 5;
  - (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.
152. Reporting entities may obtain an attestation from the third party to satisfy itself that the requirements in section 151 have been met.
153. Reporting entities may 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 5.
154. The requirements under section 147, 149 and 151 may be fulfilled if the reporting entity 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/CFT programmes in line with the requirements on this rules and regulation;
  - (2) The implementation of those CDD and record keeping requirements and AML/CFT programmes 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/CFT policies.
155. Reporting entities shall not rely on third parties to conduct ongoing due diligence of its customers.

## **CHAPTER 12 – NON FACE-TO-FACE BUSINESS RELATIONSHIPS**

156. Reporting entities are prohibited from establishing non face-to-face business relationships with its customers.
157. A non-resident Bhutanese national shall be permitted to open foreign currency and Ngultrum account online through Remit Bhutan System of the RMA. The reporting entities should comply with the provisions outlined in the Inward Remittance Rules and Regulation 2016.

### **CHAPTER 13 – HIGHER RISK COUNTRIES**

158. Reporting entities are 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/TF risks.
159. Where ML/TF risks are assessed as higher risk, reporting entities are 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/CFT deficiencies and has not made sufficient progress in addressing those deficiencies.
160. In addition to the enhanced CDD requirement under section 158, reporting entities are required to apply appropriate countermeasures, proportionate to the risk, for higher risk countries listed as having on-going or substantial ML/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 FIU, RMA on an annual basis; and
  - (5) Conduct any other measures as may be specified by FIU, RMA.

## **CHAPTER 14 – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPs)**

161. DNFBPs are also required to comply with the CDD requirements set out in Chapter 5 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 250,000
- (3). Lawyers, notaries, other independent legal professionals and accountants when they prepare for, or carry out, transactions for their client concerning the following activities:
  - buying and selling of real estate;
  - managing of client money, securities or other assets; - management of bank, savings or securities accounts;
  - organisation of contributions for the creation, operation or management of companies;
  - creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

162. For the purpose of Section 73 of the Act a reporting entity that is a dealer in precious metals or a dealer in precious stones is required to report suspicious transactions to the Financial Intelligence Department if the transaction is in cash and exceeds Nu 250,000 or the equivalent in Ngultrum or other currency.

## **CHAPTER 15 – REPORTS OF PHYSICAL CURRENCY MOVEMENTS**

### **Movement of Physical Currency**

163. Any person leaving or entering Bhutan with an amount in cash, bearer negotiable instruments (BNIs) or both, with the value exceeding or equivalent to USD 10,000, shall declare such amount to customs at the point of entry or exit

164. 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.
165. 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 in the form attached to this rules and regulations at Annexure 1.
166. 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.
167. Information obtained through the declaration process under section 163 and 165 of this rules and regulation should be forwarded by the customs authority to the Financial Intelligence Department weekly. The report should be sent to the Head Financial Intelligence Department.
168. The Royal Bhutan Police (RBP) shall assist the customs officer in carrying out its duties as mentioned under this Chapter.
169. A domestic level co-ordination among customs, immigration, Forex-RMA, Financial Intelligence Department and the police should be in place to monitor and implement this chapter.
170. The FID shall retain any Declaration made pursuant to this Chapter for no less than ten years from the date that they were made.

#### Search of persons and goods

171. A customs officer may, 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 163 of this rule and regulation.

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

172. Where a person brings into or takes out of Bhutan physical currency or a bearer negotiable instrument 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 16 – TARGETED FINANCIAL SANCTIONS**

### ENFORCEMENT OF UN SECURITY COUNCIL RESOLUTION 1267

173. For the purpose of complying with section 82(2) of the Act the Department of Law and Order shall ensure that any proposal for designation addressed to a UN Sanctions Committee complies with the listing requirements of the committee and provides as much detail as possible on the facts supporting the proposed designation and the identity of the person or organization to be designated.
174. For the purpose of complying with section 82(5) of the Act in relation to designations by the United Nations Security Council relating to the prevention and suppression of terrorism and terrorism financing the DLO shall publish the names of the persons or entities designated by the United Nations Security Council or its Committee under any resolution listed in Schedule 1.
175. Subject to the operation of sections 123 and 124 of the Act, a notice issued pursuant to section 82(5) of the Act and section 174 of the regulation shall remain in force until the revocation of the designation of the person or entity by the United Nations Security Council or its Committee.
176. Where an application is made to the Department of Law and Order pursuant to section 120 of the Act in relation to property that has been frozen pursuant to section 83 of the Act and section 123 of the Act does not apply, the Department shall take steps to forward the request to the relevant UN sanctions committee in accordance with the forms and procedures adopted by the relevant committee.

### ENFORCEMENT OF FINANCIAL MEASURES TO PREVENT TERRORISM FINANCING IMPOSED BY THE KINGDOM OF BHUTAN IN ACCORDANCE WITH UN SECURITY COUNCIL RESOLUTION 1373

177. A Prescribed entity referred to in section 187(20) of the Act includes:

- (1) any entity that is owned or effectively controlled, directly or indirectly, by a person reasonably believed to have engaged in prescribed conduct;
- (2) any entity that acts on behalf of or at the direction of a person reasonably believed to have engaged in prescribed conduct.
178. Where it is believed that a person or organization designated by the Domestic Designation Committee pursuant to section 96(1) of the Act or any property frozen pursuant to section 96(2) of the Act is located in a foreign country the Competent Authority shall transmit the designation, any related order made pursuant to section 96(2) of the Act together with a request that the person or organization be designated as a terrorist and their property be frozen in that country to the competent authorities of that country.
179. A request to the competent authorities of a foreign country pursuant to section 180 shall be accompanied by as much information as possible on the reasons for the designation of the person or organization pursuant to section 96(1) of the Act; the identity of the designated person or organization and the location of any property that is the subject of the request
180. Legal persons convicted of an offence against sections 119 and 180 of the Act shall be liable to pay a fine of up to Nu 10,000,000.

## FINANCIAL MEASURES TO PREVENT THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

### PROLIFERATION FINANCING OFFENCE

- 181 A person must not engage in conduct specified in section 183 knowing that, or reckless as to whether, the conduct relates to an activity specified in section 185.
182. A person commits an offence under section 181 even if an activity specified in section 185 does not occur or is not attempted.
183. The following conduct is specified for the purpose of section 181:

- (1) collecting, providing or managing property; or
- (2) providing advice related to the activities in subsection (1); or
- (3) providing a financial service; or
- (4) conducting a financial transaction.

184. For the purpose of section 183(4):

- (1) a person conducts a financial transaction if the person is a party to the transaction or procures or facilitates the transaction; and
- (2) a transaction can be made by any means, including electronic or physical transfer of property.

185. For the purpose of section 181, the activities specified are:

- (1) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer, export, transshipment or use of:
  - (a) nuclear weapons; or
  - (b) chemical weapons; or
  - (c) biological weapons; or
  - (d) materials related to nuclear weapons, chemical weapons or biological weapons that are prescribed in this rules and regulations; or
- (2) the provision of technical training, advice, service, brokering or assistance related to any of the activities in sub-clause (a).

186. Any property that is derived from or that is, or is intended to be, used in relation to conduct referred to in section 183 for any one or more of the purposes referred to in section 185 is to be considered proceeds for the purposes of the Act.

## DESIGNATION PROCESS

### Designations by the United Nations Security Council relating to Iran

187. For the purpose of complying with section 82(5) of the Act in relation to designations by the United Nations Security Council relating to Iran the DLO shall publish the names of the persons or entities designated by the United

Nations Security Council or its Committee under any resolution listed in Schedule 2.

188. A notice issued pursuant to section 82(5) of the Act shall remain in force until 18 October 2023 or the revocation of the designation of the person or entity by the United Nations Security Council or its Committee.

Designations by the United Nations Security Council relating to DPRK

189. For the purpose of complying with section 82(5) of the Act in relation to designations by the United Nations Security Council relating to DPRK the DLO shall publish the names of the persons or entities designated by the United Nations Security Council or its Committee under any resolution listed in Schedule 3.

190. A notice issued pursuant to section 82(5) of the Act and section 189 shall remain in force until the revocation of the designation of the person or entity by the United Nations Security Council or its Committee.

Designation by the Domestic Designation Committee relating to DPRK

191. The Domestic Designation Committee should exercise its designation powers under section 96 of the Act in relation to the following entities that are prescribed entities for the purposes of section 96:

(1) the entity is reasonably believed to be any of the following:

- (a) an entity of the Government of DPRK;
- (b) an entity of the Workers' Party of DPRK;
- (c) is owned or effectively controlled, directly or indirectly, by an entity mentioned in subclause (a) or (b);
- (d) is acting on behalf of, or at the direction of, an entity mentioned in subcluse (a) or (b); and

(2) the entity is or is reasonably believed to be involved in an activity listed in section 191.

192. The following activities are specified for the purpose of section 191:

- (1) activities prohibited under section 119 of the Act relating to DPRK; or
- (2) activities related to DPRK's weapons of mass destruction or ballistic missile-related programs; or
- (3) other activities prohibited by a United Nations Security Council Resolution listed in Schedule 3; or
- (4) attempting, participating in or facilitating activities in sub-section (1), (2) or (3).

193. The Domestic Designation Committee must take into consideration any relevant communication from a foreign government or the United Nations Security Council or its Committees when deciding whether an entity should be designated.

#### Duration of a designation and freeze order

194. A designation made by the Domestic Designation Committee under Section 96(1) of the Act relating to DPRK and any related freeze order made pursuant to section 96(2) of the Act shall continue in force until:

- (1) it expires under section 195; or
- (2) it is revoked by the Domestic Designation Committee under Section 102 of the Act.

195. A designation and any related freeze order expires 3 years after the date on which it was made.

196. The Domestic Designation Committee may extend the duration of a designation or related freeze order at any time before the designation expires if the Domestic Designation Committee continues to be satisfied that the grounds for designation in section 191 are met.

197. A designation and related freeze order that has been extended by the Domestic Designation Committee under section 196 expires 3 years after the date on which the extension was made.

198. There is no limit to the number of times the Domestic Designation Committee can extend a designation.
199. The Domestic Designation Committee may revoke a designation prior to its expiry if it reasonably believes that the grounds for designation no longer exist.

#### OTHER FINANCIAL MEASURES RELATING TO DPRK

##### **Prohibition on financing related to DPRK**

200. A person must not make available property or financial service related to an activity specified in section 201 knowing that, or reckless as to whether, the property or financial service is being made available to a person or entity specified in section 203.
201. For the purpose of section 200, the activities specified are:
- (1) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, transfer or use of an item specified in section 204; or
  - (2) the provision of technical training, advice, services, brokering or assistance related to any of the activities in subsection (1).
202. For the purpose of section 201, the following items are specified:
- (1) arms or related materiel; or
  - (2) weapons of mass destruction related material; or
  - (3) ballistic missile-related goods; or
  - (4) items, materials, equipment, goods or technology that could contribute to the operational capabilities of DPRK armed forces and are prescribed by Rules and Regulations; or
  - (5) coal, iron, or iron ore; or
  - (6) gold, titanium ore, vanadium ore, copper, silver, nickel, or zinc; or
  - (7) rare earth minerals prescribed in this rules and regulations; or
  - (8) aviation fuel; or
  - (9) any other items prescribed by rules and regulations.
203. For the purpose of section 200, the following persons and entities are specified:

- (1) a person in the territory of DPRK; or
- (2) a national of DPRK; or
- (3) a body corporate incorporated under a law of DPRK; or
- (4) the government of DPRK; or
- (5) a public body, corporation or agency of the government of DPRK; or
- (6) an entity owned or effectively controlled by a person or entity mentioned in subsection (1) to (5); or
- (7) a person acting on behalf of, or at the direction of, a person or entity mentioned in subsection (1) to (5).

### **Prohibition on financial transactions related to DPRK**

204. A person must not conduct a financial transaction related to an activity specified in section 206, knowing that, or reckless as to whether, a person or entity specified in section 208 is a party to the financial transaction.

205. For the purpose of section 204:

- (1) a person conducts a financial transaction if the person is a party to the transaction, or procures or facilitates the transaction; and
- (2) a transaction can be made by any means, including electronic or physical transfer of property.

206. For the purpose of section 204, the activities specified are:

- (1) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of an item specified in section 209; or
- (2) the provision of technical training, advice, services, brokering or assistance related to any of the activities in subsection (1).

207. For the purpose of section 206, the following items are specified:

- (1) arms or related materiel; or
- (2) weapons of mass destruction related material; or
- (3) ballistic missile-related goods; or

- (4) items, materials, equipment, goods or technology that could contribute to the operational capabilities of DPRK armed forces and are prescribed by Rules and Regulations; or
- (5) coal, iron, or iron ore; or
- (6) gold, titanium ore, vanadium ore, copper, silver, nickel, or zinc; or
- (7) rare earth minerals prescribed by this rules and regulations; or
- (8) aviation fuel prescribed by this rules and regulations; or
- (9) any other items prescribed by this rules and regulations.

208. For the purpose of section 204, the following persons and entities are specified:

- (1) a person in the territory of DPRK; or
- (2) a national of DPRK; or
- (3) a body corporate incorporated under a law of DPRK; or
- (4) the government of DPRK; or
- (5) a public body, corporation or agency of the government of DPRK; or
- (6) an entity owned or effectively controlled by a person or entity mentioned in subsection (1) to (5); or
- (7) a person acting on behalf of, or at the direction of, a person or entity mentioned in subsection (1) to (5).

#### **Prohibition on trade with DPRK**

209. A person must not provide public or private financial support for trade with DPRK.

210. For the purpose of section 209, financial support includes the granting of export credits, guarantees or insurance related to trade.

#### **Prohibition on relationships with DPRK financial institutions**

211. A financial institution must not:

- (1) establish or maintain a joint venture with a DPRK financial institution; or
- (2) obtain or maintain ownership or effective control of a DPRK financial institution; or
- (3) establish or maintain a correspondent relationship with a DPRK financial institution.

**Prohibition on maintaining offices in DPRK**

212. A financial institution must not establish or maintain a representative office, branch, subsidiary or account in the territory of DPRK.

**Prohibition on maintaining offices in the Kingdom of Bhutan**

213. A DPRK financial institution must not establish or maintain a representative office, branch, subsidiary or account in the territory of the Kingdom of Bhutan.

**Prohibition on accounts related to DPRK missions**

214. A financial institution must not open or maintain an account in the Kingdom of Bhutan knowing that, or reckless as to whether, the account holder is a person or entity specified in section 215 without authorisation under Section 271 or 272.

215. For the purpose of section 214, the following persons and entities are specified:

- (1) a DPRK diplomatic mission or consular post; or
- (2) a DPRK diplomatic agent or consular officer; or
- (3) a person or entity owned or effectively controlled by a person or entity in subsection (1) or (2); or
- (4) a person acting on behalf of, or at the direction of, a person or entity in subsection (1), (2) or (3).

**Prohibition against financial transactions related to professional or commercial activities**

216. A person must not conduct a financial transaction relating to professional or commercial profit-making activities knowing that, or reckless as to whether, the financial transaction is with, or for, a DPRK diplomatic agent.

217. For the purpose of section 216:

- (1) a person conducts a financial transaction if the person is a party to the transaction, or procures or facilitates the transaction; and

(2) a transaction can be made by any means, including electronic or physical transfer of property.

### **Prohibition against use of real property**

218. A person must not use, lease, sub-lease or hire real property for any activity other than a diplomatic or consular activity knowing that, or reckless as to whether, the real property is owned or leased:

(1) by the government of DPRK; or

(2) a public body, corporation or agency of the government of DPRK; or

(3) a DPRK diplomatic mission or consular post; or

(4) a DPRK diplomatic agent or consular officer; or

(5) a person or entity owned or effectively controlled by a person or entity in subsection (1) to (4).

### **Prohibition relating to vessels**

219. A person must not:

(1) deal with a DPRK flagged vessel; or

(2) provide an insurance service in relation to a DPRK flagged vessel.

### **Prohibition relating to leasing or chartering vessels and aircraft**

220. A person must not lease or charter a vessel or aircraft, or provide a crew service to a person or entity knowing that, or reckless as to whether, the person or entity is:

(1) the government of DPRK; or

(2) a public body, corporation or agency of the government of DPRK; or

(3) owned or effectively controlled by an entity mentioned in subsection (1) or (2); or

(4) acting on behalf of, or at the direction of, an entity mentioned in subsection (1) or (2).

## **Other Financial Measures Relating to Iran**

### **Prohibition on financing related to Iran**

221. A person must not make available property or a financial service related to an activity specified in section 222 knowing that, or reckless as to whether, the property or financial service is being made available to a person or entity specified in section 224.
222. For the purpose of section 221, the activities specified are:
- (1) the manufacture, production, possession, stockpiling, storage, development, transportation, supply, sale, transfer or use of an item listed in section 223; or
  - (2) the provision of technical training, advice, services, brokering or assistance related to any of the activities in subsection (1).
223. For the purpose of section 222 (1) the items listed are:
- (1) materials, equipment, goods or technology listed in the following International Atomic Energy Agency documents:
    - (a) INFCIRC/254/Rev.12/Part 1; or
    - (b) INFCIRC/254/Rev.9/Part 2; or
  - (2) arms or related materiel; or
  - (3) ballistic missile-related goods; or
  - (4) materials, equipment, goods or technology that could contribute to reprocessing or enrichment-related or heavy water-related activities and that are prescribed by Rules and Regulations.
224. For the purpose of section 221, the following persons and entities are specified:
- (1) the government of Iran; or
  - (2) a public body, corporation or agency of the government of the Iran; or

- (3) an entity owned or effectively controlled by an entity mentioned in subsection (1) or (2); or
- (4) a person or entity acting on behalf of, or at the direction of, an entity mentioned in subsection (1), (2) or (3).

**Prohibition on financial transactions related to Iran**

225. A person must not conduct a financial transaction related to an activity listed in section 227, knowing that, or reckless as to whether, a person or entity specified in section 229 is a party to the financial transaction.
- 226 For the purpose of section 225:
- (1) a person conducts a financial transaction if the person is a party to the transaction or procures or facilitates the transaction; and
  - (2) a transaction can be made by any means, including electronic or physical transfer of property.
227. For the purpose of section 225, the activities specified are:
- (1) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, transfer or use of an item listed in section 228; or
  - (2) the provision of technical training, advice, services, brokering or assistance related to any of the activities in subsection (1).
228. For the purpose of section 227(1) the items listed are:
- (1) materials, equipment, goods or technology listed in the following International Atomic Energy Agency documents:
    - (a) INFCIRC/254/Rev.12/Part 1; or
    - (b) INFCIRC/254/Rev.9/Part 2; or
  - (2) arms or related materiel; or
  - (3) ballistic missile-related goods; or
  - (4) materials, equipment, goods or technology that could contribute to reprocessing or enrichment-related or heavy water-related activities and that are prescribed by Rules and Regulations.

229. For the purpose of section 225, the following persons and entities are specified:

- (1) the government of Iran; or
- (2) a public body, corporation or agency of the government of the Iran; or
- (3) an entity owned or effectively controlled by an entity mentioned in subsection (1) or (2); or
- (4) a person or entity acting on behalf of, or at the direction of, an entity mentioned in subsection (1), (2) or (3).

**Prohibition on commercial activities**

230. A person must not sell, or otherwise make available, ownership in or effective control of, a commercial activity specified in section 231 knowing that, or reckless as to whether, the sale or availability is to a person or entity specified in section 232.

231. For the purpose of section 230, the following commercial activities are specified:

- (1) uranium mining; or
- (2) uranium production; or
- (3) manufacturing, producing, possessing, acquiring, stockpiling, storing, developing, transporting, supplying, selling, transferring or using:
  - (a) materials, equipment, goods, or technology that are listed in International Atomic Energy Agency document INFCIRC/254/Rev.12/Part 1; or
  - (b) ballistic missile-related goods.

232. For the purpose of section 230, the following persons and entities are specified:

- (1) a national of Iran; or
- (2) a body corporate incorporated under a law of Iran; or
- (3) the government of Iran; or
- (4) a public body, corporation or agency of the government of the Iran; or
- (5) an entity owned or effectively controlled by an entity mentioned in subsection (1) to (4); or
- (6) a person acting on behalf of or at the direction of an entity mentioned in subsection (1) to (5).

**Penalty**

233. A person who contravenes section 181 to 230 is guilty of an offence and shall be liable as per section 167 and 168 of the AML/CFT Act 2018.

**Freeze orders****Court may grant order for seizure of frozen property**

234. The Department of Law and Order or the Royal Bhutan Police may apply to the court for an order authorizing an officer of the Royal Bhutan Police to search for and seize property that has been frozen pursuant to section 82(5) or section 96 of the Act and chapter 16 of this rules and regulations.

235. The Department of Law and Order or the Royal Bhutan Police may make an application to the court under section 234 at their own instigation or upon the request of the holder of frozen property.

236. On application by the Department of Law and Order or the Royal Bhutan Police, the court may make an order for an officer of the Royal Bhutan Police to search for and seize frozen property in the following circumstances:

(1) the seizure is necessary in order to preserve the property; or

(2) there is a reasonable risk that the property will be dissipated or disposed of.

237. If during the course of a search under an order granted under section 236, the officer conducting the search finds property that he or she has reasonable grounds to believe could have been included in the order had its existence been known at the time of application of the order, the officer may seize that property and the seizure order shall be deemed to authorize such seizure.

238. Property seized under an order granted under section 236 may only be retained so long as the property remains frozen under this Act.

**Administration**

239. A person may apply to the Department of Law and Order for authorization to act in contravention of a prohibition in this section of the rules and regulations.

240. In relation to a prohibition in section 200 to 220 or section 221 to 232 the Department of Law and Order may grant an authorization if the action contravening a prohibition is required to meet:
- (1) a basic expense;
  - (2) a contractual obligation;
  - (3) an extraordinary expense;
  - (4) a judicial, administrative or arbitral lien or judgement entered into prior to the designation of the person and the property is necessary to satisfy that lien or judgement
241. In relation to persons and entities designated by the United Nations Security Council or its Committees under United Nations Security Council Resolutions listed in Schedule 3 or prescribed in this rules and regulations relating to DPRK, the Department of Law and Order may also grant an authorization if the action contravening the prohibition is:
- (1) necessary to carry out activities of DPRK's missions to the United Nations and its specialized agencies and related organizations or other diplomatic and consular missions of DPRK; or
  - (2) necessary for the delivery of humanitarian assistance; or
  - (3) necessary for denuclearization.

### **Duties of Reporting Entities**

242. Reporting entities are required to have procedures in place to monitor the publication of the names of persons or organizations designated by the UN Security Council and published pursuant to section 82(5) of the Act or persons or organizations designated pursuant to section 96 of Act.
243. The procedures established pursuant to 241 should enable reporting entities to:
- (1) Implement the freezing of property imposed by section 83 or 96(2) of the Act without delay;
  - (2) Report the existence of property frozen pursuant to section 83 or 96(2) of the Act to the FID without delay

244. Any transaction relating to currency or other property with a value in excess of USD 3000 involving a reporting entity and a DPRK citizen or DPRK financial institution shall be deemed to be a suspicious transaction that is reportable pursuant to section 69 of the Act and shall be dealt with accordingly.
246. A reporting entity that fails to comply with the requirements of Chapter 16 commits an offence and is subject to the penalties and sanctions referred to in section 172 of the Act.

### **CHAPTER 17 – OFFENCES**

#### **Provision of false or misleading information**

246. A person commits an offence if the person
- (1) Produces to a reporting entity false or misleading information; or
  - (2) Produces to a reporting entity a false or misleading document; or
  - (3) Forges a document for use in an customer identification procedure of a reporting entity; or
  - (4) Obtains or receives a financial service using a false customer name.

#### **Penalty:**

247. A person commits an offence under section 246 of this rules and regulation shall be liable on conviction to a felony of third degree or fourth degree as per Penal Code of Bhutan.

#### **Structuring so as to avoid reporting requirements relating to threshold transactions**

248. 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 250 applies; and
- (b) Any explanation made by the first person as to the manner or form in which the transactions were conducted;

It would be reasonable to conclude, having regard to evidence dealing with the matters referred to in section 282 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 this rules and regulations.

**Penalty:**

249. A person commits an offence under Section 248 of this rules and regulation shall be liable to any penalty as per Penal Code of Bhutan.

250. It is a defense to a charge under section 248 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 this rule and regulations.

251. The following matters may be relevant to drawing a reasonable conclusion as required in section 248:

- (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;
- (5) The locations at which the transactions took place.

252. Non-Compliance to the provision of Sec. 28 to 55 and Sec 61 to 65 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 reporting entity still continues to be non-compliance than a fine upto Nu. 10,000,000 and shall lead to suspension of business license.
253. Non-Compliance to the provision of Chapter 5 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 reporting entity still continues to be non-compliance than a fine upto Nu. 10,000,000 and shall lead to suspension of business license
254. Non-compliance to reports of suspicious transactions under section 108 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.
255. Failure to report cash and other transactions under Section 114&121 or late reporting shall be liable to a fine of Nu. 10,000 per day from the period of infraction.
256. In case of wrong reporting of cash and other transaction under section 114&121 shall be liable to a fine of Nu. 100,000 thereafter notify reporting entities to rectify within 15days. If not rectified within the time period thereafter impose penalty of Nu. 10,000 per day for the period of infraction.
257. Non-Compliance to the provision of Chapter 8, 11 and 14 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.
258. Non-Compliance to the provision of Chapter 10 and 12 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.
259. 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 to the payment of an 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.

260. A person who breaches Chapter 2 commits an offence and is liable, upon conviction in a court of law, to an appropriate penalty.
261. 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 for the period of infraction.
262. 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 the greater of Nu. 1,000,000 or three times the amount frozen, whichever is higher.
263. A reporting entity or an employee or director of a reporting entity that commits an offence against section 169 of the Act shall be liable to an administrative penalty of up to Nu 10,000, per day for the period of infraction.
264. The maximum administrative penalty that may be imposed by a supervisor pursuant to section 172(2) of the Act is Nu 10,000,000.
265. 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.
266. For the purposes of section 170 of the Act the penalties applicable to an offence against section 171 of the Act shall apply to a reporting entity or a person who is a member of the board of directors of a reporting entity or who is an employee of a reporting entity at senior management level who is found to have committed an offence against section 169 of the Act.

#### Record keeping penalty

267. A person shall be guilty of the offence of the felony of the fourth degree if he/she destroys, conceals, mutilates or improperly alters any record or account required to be kept or maintained under any of the provisions of AML/CFT Act or of this rules and regulations; or
268. A person shall be guilty of the offence of petty misdemeanor if he/she 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 AML/CFT Act or of this rules and regulations.

269. Non-Compliance to the provision of record keeping requirement under AML/CFT Act or of this rules and regulation 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.

270. Non-compliances with any other requirements in this rules and regulation shall liable as per the relevant laws of Bhutan.

## **DEFINITIONS**

**Account** has the same meaning as Sec. 187(1) of AML/CFT Act 2018.

**Arms or related materiel** includes:

- (a) weapons; and
- (b) ammunition; and
- (c) military vehicles and equipment, including:
  - (i) battle tanks; and
  - (ii) armoured combat vehicles; and
  - (iii) large calibre artillery systems; and
  - (iv) combat aircraft; and
  - (v) attack helicopters; and
  - (vi) warships; and
  - (vii) missiles and missile systems,

which have the same meanings as they have for the purposes of reports by member States to the United Nations Register of Conventional Arms established under United Nations General Assembly Resolution A/RES/46/36L of 6 December 1991; and

- (d) spare parts and accessories for the items mentioned in subsection (a), (b) or (c); and
- (e) paramilitary equipment, including:
  - (i) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes; and
  - (ii) tear gas and other riot control agents; and
  - (iii) body armour, bullet resistant apparel and helmets; and
  - (iv) handcuffs, leg-irons and other devices used for restraining prisoners; and
  - (v) riot protection shields; and

- (vi) whips; and
- (vii) parts and accessories designed or adapted for use in, or with, equipment mentioned in sub-clauses (i) to (vi);

**AML/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.

**Agent** means any natural or legal person providing MVTS on behalf of an MVTS provider, whether by contract with or under the direction of the MVTS provider.

**Authorisation** as used in chapter 16 means a permission granted by the Department of Law and Order to undertake an act or make an omission that is otherwise prohibited by this Act and can include conditions imposed on the permission;

**Ballistic missile-related goods** means items, materials, equipment or technology:

- (a) listed in Security Council document S/2015/546; or
- (b) that could contribute to ballistic missile-related programmes or weapons of mass destruction delivery systems and are prescribed by Rules and Regulations;

**Bearer negotiable instrument** means:

- (a) a bill of exchange; or
- (b) a cheque; or
- (c) a promissory note; or
- (d) a bearer bond; or
- (e) a traveller's cheque; or
- (f) a money order, postal order or similar order; or
- (g) a bearer negotiable instrument not covered by any of the above subsections.

**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.

**Beneficial owner** has the same meaning as Sec. 187(5) of AML/CFT Act 2018

**Biological weapon** means any agent, toxin, weapon, equipment, or means of delivery mentioned in Article 1 of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 10 April 1972;

**Cash or other transaction** means:

- (a) a transaction involving the transfer of physical currency; or
- (b) a transaction involving the transfer of money in the form of e-currency; or

**Chemical weapon** has the same meaning as in Article II of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, of 3 September 1992;

**Company** has the same meaning as in the Companies Act of the Kingdom of Bhutan 2000.

**Consular officer** has the same meaning as in Article 1(1)(d) of the Vienna Convention on Consular Relations, of 24 April 1963;

**Contractual obligation** means an obligation whereby a payment is required under a contract or agreement made before the date of the designation and where the payment required does not violate the requirements of a United Nations Security Council Resolution listed in Schedule 2 or 3;

**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:

- (a) the correspondent carries on a banking or currency or value transfer business at or through a permanent place of business in one country; and
- (b) the respondent carries on a banking or currency or value transfer business at or through a permanent place of business in another country; and
- (c) 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;

**Country** means the Kingdom of Bhutan or a foreign country.

**Crew service** means a service providing:

- (a) flight or cabin crew for a vessel or aircraft; or
- (b) a person to travel on board a vessel or aircraft for any purpose relating to the vessel or aircraft’s operation; or
- (c) a person to travel on board a vessel or aircraft to examine the qualifications or competency of flight or cabin crew;

**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.

**Deal** includes sale, supply, lease, transfer, conversion, disposition, movement or use, and “dealing” and “dealt” have the same meaning;

**Designated non-financial businesses and professions (DNFBPs)** has the same meaning as Sec. 187(7) of AML/CFT Act 2018

**Designated person or organization** means a person, organization or entity:

- (a) designated by the Domestic Designation Committee under Section 96 of the Act; or
- (b) designated by the United Nations Security Council or its Committees pursuant to a Resolution listed in Schedules 1, 2 or 3 and whose name has been published in a notice issued pursuant to section 82(5) of the Act;

**Domestic wire transfers** 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.

**DPRK** means the Democratic People’s Republic of Korea

**DPRK financial institution** means a person or entity, wherever located, that conducts an activity listed in subsection (a) to (o) of the definition of financial institution in section 187(11) of the Act and that is:

- (a) regulated, registered, incorporated or licensed under any law of DPRK; or
- (b) owned or effectively controlled by DPRK;

**DPRK flagged vessel** means a vessel:

- (a) regulated, registered or licensed under a law of DPRK; or
- (b) owned or controlled by DPRK;

**E-currency** means an internet-based, electronic means of exchange that is:

- (a) known as any of the following:
  - (i) e-currency;

- (ii)e-money;
  - (iii)digital currency;
  - (iv)a name specified by the RMA; and
- (b) backed either directly or indirectly by:
- (i)precious metal; or
  - (ii)bullion; or
  - (iii)a form of holding or transferring value; and
- (c) not issued by or under the authority of a government body; and includes anything that, under this rules and regulations, is taken to be e-currency for the purposes of this Act.

**Extraordinary expense** means any payment which is not a basic expense or a contractual obligation that the Department of Law and Order considers:

- (a) to be necessary; and
- (b) does not violate the requirements of a United Nations Security Council Resolution listed in Schedule 2 or 3;

**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/CFT policies and procedures at the group level.

**Foreign company** has the same meaning as in the Companies Act 2000

**Foreign counterparts** refers 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/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).

**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.

**Funds transfer** means the series of transactions beginning with the issue of 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

**Government body** means:

- (a) the government of a country; or
- (b) an agency or authority of the government of a country; or
- (c) the government of part of a country; or
- (d) an agency or authority of the government of part of a country

**International funds transfer** means any movement of funds into or out of Bhutan

**Iran** means the Islamic Republic of Iran;

**Legal arrangements** refers to express trusts or other similar legal arrangements

**Legal persons** refers 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 relevantly similar entities

**Money Laundering/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.

**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.

**Nuclear weapon** means any weapon that derives its destructive force from nuclear reactions and any explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used, whether assembled, partly assembled, or unassembled;

**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

**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

**Payment instruction** means an unconditional instruction issued by an originator in writing or transmitted electronically to a financial institution to effect a funds transfer for a certain sum of money expressed in Ngultrum or any other currency,

- (a) to the designated account of a designated beneficiary by debiting correspondingly an account of the originator; or
- (b) 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
- (c) to the designated account of a designated beneficiary with the recipient financial institution having received the funds from the originator; or
- (d) directly to a designated beneficiary who does not have an account with the recipient financial institution having received the funds from the originator

**Person** means any natural or legal person including an entity.

**Politically exposed persons (PEPs)** refers to:

- (a) 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;
- (b) 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
- (c) 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.

**Precious metal** means:

- (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; or

(i) any alloy or other substance containing:

- (i) gold; or
- (ii) silver; or

(iii) platinum; or

(iv) palladium; or

(v) iridium; or

(vi) osmium; or

(vii) rhodium; or

(viii) a metal as specified in the rules and regulations.

**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.

**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;

**Satisfied** where reference is made to a reporting entity being satisfied as to a matter, the reporting entity should have reasonable grounds to support its assessment of the matter and must be able to justify its assessment to the supervisory authority.

**Senior Management** refers to any person(s) having authority and responsibility for planning, directing or controlling the activities of a reporting institution including the management and administration of a reporting institution

**Shell bank** has the same meaning as Sec. 187(22) of AML/CFT Act 2018

**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.

**Trust** means a person in the capacity of trustee or, as the case requires, a trust estate.

**Trustee** means an individual or organization which holds or manages and invests assets for the benefit of another.

**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.

**Weapons of mass destruction related material** means items, materials, equipment, goods, or technology:

(a) listed in any of the following documents:

- (i) Security Council document S/2006/814;
- (ii) Security Council document S/2006/815;
- (iii) Security Council document S/2006/853;
- (iv) Security Council document S/2006/853/CORR.1;
- (v) Security Council document S/2009/205;
- (vi) Security Council document S/2013/136;
- (vii) International Atomic Energy Agency document INFCIRC/254/ Rev.9/Part 1a;
- (viii) International Atomic Energy Agency document INFCIRC/254/ Rev.7/Part 2a;
- (ix) Annex III to United Nations Security Council Resolution 2321; or

(b) that could contribute to DPRK's nuclear-related, ballistic missile-related or weapons of mass destruction-related programmes and are the subject of a determination made by the United Nations Security Council or its Committees under section 8(a)(ii) of United Nations Security Council Resolution 1718 that has not ceased to have effect; or

(c) that are dual-use conventional arms and are the subject of a determination made under section 7 of United Nations Security Council Resolution 2321; or

(d) that could contribute to weapons of mass destruction-related programmes and are prescribed by Rules and Regulations.



**Schedule 1**

**United Nations Security Council Resolutions Related to Al Quaida and the Taliban**

Resolution 1267

Resolution 1333

Resolution 1363

Resolution 1390

Resolution 1452

Resolution 1455

Resolution 1526

Resolution 1617

Resolution 1735

Resolution 1822

Resolution 1904

Resolution 1989

Resolution 2083

Resolution 1988

Resolution 1730

Resolution 2082

Together will all successor resolutions to the above resolutions

**Schedule 2**

**United Nations Security Council Resolutions Related to Iran**

Resolution 1737

Resolution 2232

Together will all successor resolutions to the above resolutions

**Schedule 3**

**United Nations Security Council Resolutions Related to DPRK**

Resolution 1718

Resolution 1874

Resolution 2087

Resolution 2094

Resolution 2270

Resolution 2321

Together will all successor resolutions to the above resolutions

Annexure 1

Declaration Pursuant to section 165 of the Anti-Money Laundering and Combating the Financing of Terrorism Rules and Regulations 2018

I Declare that the cash\*/bearer negotiable instruments described in the schedule have been placed in the custody of:

.....  
Name of postal service/courier service/freight service

For delivery to:

.....

.....  
Full name and address of consignee

.....

.....  
Full name and address of consignor

.....  
Signature of consignor

Date:

Schedule

Full description of currency or bearer negotiable instrument consigned, including the currency type, type of bearer negotiable instrument and value.