SUBSIDIARY LEGISLATION

FINANCIAL OBLIGATIONS REGULATIONS

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PART I

PRELIMINARY

Citation.

1. These Regulations may be cited as the Financial Obligations Regulations.

Interpretation.
[392/2014].

2. (1) In these Regulations,—

"applicant" or "applicant for business" means a person seeking to form a business relationship, or carry out a one-off transaction, with a financial institution or listed business;

"business relationship" means an arrangement between—

(a) a financial institution and a customer; or

(b) a listed business and a customer,

for the carrying out of a financial transaction on a regular basis;

"Central Bank" means the bank established and incorporated under the Central Bank Act; Ch. 79:02.

"Compliance Officer" means the person designated in accordance with regulation 3, as the anti-money laundering compliance officer, for any financial institution or listed business;

"Constitution" means the Constitution of the Republic of Trinidad and Tobago; Ch. 1:01.

"Core Principles" means the Core Principles for Effective Banking Supervision issued by the Basel Committee on Banking Supervision, the Objectives and Principles for Securities Regulation issued by the International Organisation of Securities Commissions, and the Insurance Core Principles issued by the International Association of Insurance Supervisors;

"cross-border wire transfer" in relation to the transfer of money, means a single wire transfer in which the originator and beneficiary of the transfer are located in different countries or any chain of such transfers;

"Director" means the Director of the FIU;

"domestic wire transfer" in relation to the transfer of money, means any wire transfer in which the originator and beneficiary are located in Trinidad and Tobago;

"Financial Action Task Force" means the task force established by the Group of Seven, to develop and promote national and international policies to combat money laundering and terrorist financing;

"financial group" means a group that consists of a parent company or any other type of legal person, exercising control and co-ordinating functions over the rest of the group for the application of group supervision under the core principles together with branches or subsidiaries that are subject to anti-money laundering policies and procedures at the group level;

"financial institution" has the meaning assigned to it in the Act and "institution" has the corresponding meaning;

"FIU" means the Financial Intelligence Unit established under the Financial Intelligence Unit of Trinidad and Tobago Act; Ch. 72:01.

"listed business" means any business activity or profession listed in the First Schedule to the Act; First Schedule.

"Minister" means the member of the Cabinet to whom responsibility for finance is assigned;

"money or value transfer service business" 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 or value transfer service belongs;

"one-off transaction" means any transaction other than one carried out in the course of an existing business relationship;

"originator" means a person whether natural or legal who places an order with the financial institution or listed business for the transmission of a wire transfer;

"public authority" means—

(a) Parliament;

(b) the Supreme Court of Judicature established under the Constitution, the Industrial Court, established under the Industrial Relations Act, the Tax Appeal Board established under the Tax Appeal Board Act, the Environmental Commission established under the Environmental Management Act, the Land Tribunal established under the Land Tribunal Act or any other superior Court of record; Ch. 88:01. Ch. 4:50. Ch. 35:05. 15 of 2000.

(c) a Court of summary jurisdiction;

(d) a ministry or a department of a ministry;

(e) a service commission established under the Constitution; Ch. 1:01.

(f) the Tobago House of Assembly, established under the Constitution, the Executive Council of the Tobago House of Assembly or a division of the Tobago House of Assembly;

(g) a municipal corporation established under the Municipal Corporations Act; Ch. 25:04.

(h) a regional health authority established under the Regional Health Authorities Act; Ch. 29:05.

(i) a body created by statute, responsibility for which is assigned to a member of the Cabinet;

(j) a company incorporated or continued under the Companies Act, which is owned or controlled by the State, other than a company licensed under the Financial Institutions Act; or Ch. 81:01. Ch. 79:09.

(k) a body corporate or unincorporated entity—

(i) in relation to any function which it exercises on behalf of the State; or

(ii) which is supported, directly or indirectly, by funds appropriated by Parliament and over which government is in a position to exercise control;

"Supervisory Authority" means in respect of—

(a) financial institutions licensed under the Financial Institutions Act, the Insurance Act, Ch. 79:09. Ch. 84:01.

Ch. 79:50. Ch. 32:01. Ch. 79:08. Ch. 79:07. Ch. 83:03. the Exchange Control Act, or the National Insurance Board established under the National Insurance Act, the Home Mortgage Bank established under the Home Mortgage Bank Act, the Agricultural Development Bank established under the Agricultural Development Bank Act, the Unit Trust Corporation of Trinidad and Tobago established under the Unit Trust Corporation of Trinidad and Tobago Act, the Trinidad and Tobago Mortgage Finance Company and the Central Bank;

(b) the Trinidad and Tobago Securities and Exchange Commission for a person registered as a broker-dealer, underwriter or investment adviser under the Securities Act; and Ch. 83:02.

(c) other financial institutions and listed business, the FIU;

Ch. 11:27. "the Act" means the Proceeds of Crime Act; and

"wire transfer" means any transaction carried out on behalf of an originator, who may be either a natural or a legal person by electronic means, through a financial institution, with a view to making money available to a beneficiary at another financial institution or listed business.

(2) In these Regulations, a reference to an amount in Trinidad and Tobago dollars, includes a reference to an equivalent amount in any other currency.

PART II

TRAINING OBLIGATIONS AND COMPLIANCE PROGRAMME OF A FINANCIAL INSTITUTION OR LISTED BUSINESS

Compliance Officer. [392/2014].

3. (1) Subject to subregulations (2) and (3), a financial institution shall for the purpose of securing compliance with section 55A of the Act and these Regulations, designate a manager or official employed at managerial level as the Compliance Officer of that institution.

(2) Where the financial institution employs five persons or less, the employee who occupies the most senior position, shall be the Compliance Officer.

(3) Where the financial institution is an individual who neither employs nor acts in association with another person, that individual shall be the Compliance Officer.

(4) The financial institution or listed business shall be responsible for training the Compliance Officer in accordance with regulation 6.

(5) A listed business shall, for the purpose of securing compliance with section 55A and these Regulations, designate a Compliance Officer for that listed business.

(6) The Compliance Officer designated under subregulation (5) shall be either a senior employee of the listed business or such other competent professional as approved in writing by the FIU.

(7) Where the person who is designated as the Compliance Officer under subregulation (5) is not an employee of the listed business, the responsibility for the compliance obligations is that of the business.

(8) A financial institution or listed business shall appoint an alternate for the Compliance Officer who shall–

(a) in the case of financial institutions, be a senior employee of the financial institution; or

(b) in the case of listed businesses, be a senior employee or such other competent professional as approved in writing by the relevant Supervisory Authority; and

(c) in the absence of the Compliance Officer, discharge the functions of the Compliance Officer.

Functions of the Compliance Officer. [392/2014].

4. (1) The Compliance Officer shall—

(a) ensure that the necessary compliance programme procedures and controls required by these Regulations are in place;

(b) co-ordinate and monitor the compliance programme to ensure continuous compliance with these Regulations;

(c) receive and review reports of suspicious transactions, or suspicious activities made by the staff of the financial institution or listed business and report the same to the FIU in accordance with the Act and guidelines issued by the relevant Supervisory Authority;

(d) maintain records of reports of the type identified in paragraph *(c)*; and

(e) function as the liaison official with the FIU, where the institution or business executes the instructions of the Director.

(2) A financial institution or listed business shall seek the approval of the relevant Supervisory Authority for the appointment of the Compliance Officer and alternate Compliance Officer, designated under regulation 3.

(3) The identity of the Compliance Officer and alternate Compliance Officer shall be treated with strictest confidence by the members of staff of the institution or business.

(4) ***(Revoked by LN 392/2014).***

Recruitment of staff. [392/2014].

5. (1) The financial institution or listed business shall utilise best practices of the industry, to determine its staff recruitment policy, with the use of which, staff of the highest levels of integrity and competence shall be hired and retained.

(2) The names, addresses, position titles and other official information pertaining to staff appointed or recruited by the financial institution or listed business shall be maintained for up to a period of six years after termination of employment and made available to the relevant Supervisory Authority as requested.

(3) The financial institution or listed business shall ensure to the extent permitted by the laws of the relevant country, that similar recruitment policies are followed by its branches,

subsidiaries and associate companies abroad, especially in those countries which do not or insufficiently comply with the recommendations of the Financial Action Task Force.

Training of staff. [392/2014].

6. (1) The financial institution or listed business shall make arrangements for the training and ongoing training of the directors and all members of its staff to equip them—

(a) to perform their obligations under—

(i) the Act;

(ii) the Financial Intelligence Unit of Trinidad and Tobago Act; Ch. 72:01.

(iii) the Anti-Terrorism Act; Ch. 12:07.

(iv) these Regulations;

(v) guidelines on the subject of money laundering issued under regulation 4(4); and

(vi) any other written law by which the recommendations of the Financial Action Task Force are implemented;

(b) to understand the techniques for identifying any suspicious transactions or suspicious activities; and

(c) to understand the money laundering threats posed by new and developing technologies.

(2) The training required by subregulation (1), shall be given in such a manner that employees at all levels of the financial institution or listed business, would become capable of detecting suspicious transactions and other suspicious activities.

Compliance programme. [392/2014].

7. (1) A compliance programme established under the Act shall be appropriate for the respective financial institutions and listed business and shall be designed to include policies, procedures and controls for—

(a) customer identification, documentation and verification of customer information and other customer due diligence measures;

(b) identification and internal reporting of suspicious transactions and suspicious activities;

(c) adoption of a risk-based approach to monitoring financial activities, which would include

categories of activities that are considered to be of a high risk;

(d) external and independent testing for compliance;

(e) an effective risk-based audit function to evaluate the compliance programme;

(f) internal control and communication as may be appropriate for the purposes of forestalling money laundering;

(g) retention of transaction records and other information;

(h) a list of countries, published by the Financial Intelligence Unit, which are non-compliant, or do not sufficiently comply with the recommendations of the Financial Action Task Force; and

(i) adoption of risk-management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

(2) For the purposes of subregulation (1)*(c)*, a financial institution or listed business shall take appropriate steps to identify, assess and understand their money laundering risks for customers, countries or geographic areas and products, services, transactions or delivery channels and what measures are to be taken to manage and mitigate such risks.

(3) Financial groups shall ensure that group-wide programmes against money laundering are implemented which are applicable and appropriate to all branches and subsidiaries of the financial group.

(4) Financial groups shall ensure that group-wide programmes under subregulation (3) take into consideration the requirements of regulations 3, 4, 5, 6 and 7(1) and include—

(a) policies and procedures for sharing information required for the purposes of customer due diligence and money laundering risk management;

(b) the provision, at group-level compliance, audit and anti-money laundering functions of customer, account, and transaction information from branches and subsidiaries when necessary for anti-money laundering purposes; and

(c) adequate safeguards for confidentiality and use of information exchanged.

(5) Financial institutions shall ensure that their foreign branches and subsidiaries apply anti-money laundering measures consistent with the requirements of the Act and these Regulations.

(6) Where the minimum anti-money laundering requirements in the country where the foreign branch or subsidiary is located is less strict than those required under the Act or these Regulations, the financial institution shall apply the requirements of the Act and these Regulations to the foreign branch or subsidiary where there is no bar to the implementation of such requirements in the country where the foreign branch or subsidiary is located.

(7) Where the anti-money laundering laws in the country in which a foreign branch or subsidiary is located does not permit the proper implementation of the Act and these Regulations, a financial institution shall apply apporpriate due diligence measures to manage the anti-money laundering risk of the foreign branch and subsidiary in the financial group and advise the relevant Supervisory Authority in Trinidad and Tobago of the measures taken.

(8) A person who carries on money or value transfer services shall require his or its subagents to follow his or its compliance programmes and monitor those subagents for compliance with the compliance programmes.

Internal reporting to Compliance Officer. [392/2014].

8. (1) In support of its compliance programmes, a financial institution or listed business shall establish internal reporting rules which would—

(a) mandate any person employed in a financial institution or with a listed business, who knows or has reasonable grounds to suspect that a transaction involves the use of, or the proceeds

of criminal conduct, to report the matter to the Compliance Officer in writing and keep copies of the said report;

(b) mandate the Compliance Officer to consider the report in the light of any relevant information which is available to him and any such guidelines issued by the relevant Supervisory Authority, under regulation 40A and to determine whether it gives rise to such knowledge or suspicion; and

(c) make it obligatory for the Compliance Officer to report the activity or suspicious transaction to the FIU within the period stipulated in the Act, where he makes such a determination.

(2) The financial institution or listed business shall also ensure that the Compliance Officer and other employees have timely access to customer identification data and other records and relevant information to enable them to produce reports in a timely manner.

Legal professional adviser.

9. (1) Regulation 8 shall not apply where a listed business is a legal professional adviser and the knowledge or suspicion is based on advice or information or other matters which came to him in privileged circumstances.

(2) Information or any other matter comes to a professional legal adviser in privileged circumstances, if it is communicated or given to him or given—

(a) by his client or a representative of the client, in connection with the provision of legal advice to him;

(b) by another person or his representative, seeking legal advice from the adviser; or

(c) in connection with legal proceedings or contemplated legal proceedings.

(3) This regulation does not apply in the case of information or other matters, which is communicated or given with a view to furthering a criminal purpose known to the professional legal adviser.

Auditors to review programme.

10. (1) The compliance programme of a financial institution or listed business shall be reviewed by the internal and external auditors engaged by the financial institution or listed business.

(2) In reviewing the compliance programme—

(a) the external auditor shall evaluate compliance with relevant legislation and guidelines and shall submit reports and recommendations annually or with such frequency as may be specified by the relevant Supervisory Authority, to the Board of Directors of the financial institution or listed business and to the relevant Supervisory Authority; and

(b) the internal auditor shall ensure that policies, procedures and systems are in compliance with the requirements of these Regulations and that the level of transaction testing, is in line with the risk profile of the customer.

(3) Where the financial institution or listed business does not engage the services of an external or internal auditor, the Supervisory Authority shall assign a competent professional to perform the functions outlined in subregulation (2).

(4) The cost of the services of the competent professional assigned by the Supervisory Authority to review the compliance programme under subregulation (3), shall be met by the financial institution or listed business.

(5) All auditors or other competent professionals engaged for the purposes of these Regulations, shall be specifically trained to undertake their functions.

PART III

CUSTOMER DUE DILIGENCE

Identification procedure. [392/2014].

11. (1) Where a financial institution or listed business undertakes a financial transaction—

(a) pursuant to an agreement to form a business relationship;

(b) as a one-off or occasional transaction of ninety thousand dollars or more;

(c) as two or more one-off transactions, each of which is less than ninety thousand dollars but together the total value is ninety thousand dollars or more and it appears, whether at the outset of each transaction or subsequently that the transactions are linked; or

(d) as a one-off or occasional wire transfer of six thousand dollars or more or two or more one-off transactions, each of which is less than six thousand dollars, but together the total value is six thousand dollars or more and it appears, whether at the outset of each transaction or subsequently that the transactions are linked,

the financial institution or listed business shall conduct due diligence in accordance with this Part and shall make rules for so doing, in accordance with the categories of risk established under regulation 7.

(1A) A members' club registered under the Registration of Clubs Act and such persons licensed under the Gambling and Betting Act shall, in respect of a customer who engages in—

Ch. 21:01

Ch. 11:19

(a) a transaction of eighteen thousand dollars and over; or

(b) two or more transactions each of which is less than eighteen thousand dollars, but together the value of which is eighteen thousand dollars or more and it appears, whether at the outset of each transaction or subsequently that the transactions are linked,

comply with the requirements of these Regulations.

(1B) A financial institution or listed business may rely on a third party financial institution or listed business to perform elements of customer due diligence, such as identification of the customer, identification of the beneficial owner and understanding the nature of the business, or to introduce the business.

(1C) Notwithstanding subregulation (1B), the ultimate responsibility for customer due diligence measures is that of the financial institution or listed business relying on the third party financial institution or listed business.

(1D) A financial institution or listed business seeking to rely on a third party financial institution or listed business to perform elements of customer due diligence under subregulation (1B) shall—

(a) obtain immediately, the necessary information concerning identification of the customer, identification of the beneficial owner and understanding the nature of the business;

(b) take steps to satisfy itself that copies of identification data and other relevant documentation relating to customer due diligence requirements will be made available from the third party financial institution or listed business upon request without delay; and

(c) satisfy itself that the third party financial institution or listed business is—

(i) regulated; or

(ii) supervised or monitored, and has measures in place for compliance with customer due diligence and record-keeping requirements.

(1E) Where a third party financial institution or listed business is located in another jurisdiction, a financial institution or listed business shall consider whether the conditions in subregulation (1D)*(c)* are met and should take into consideration the level of risk associated with those countries.

(1F) Where a financial institution or listed business relies on a third party financial institution or listed business that is part of the same group to perform elements of customer due diligence, the relevant Supervisory Authority may determine that the requirements of subregulations (1B) to (1D) are satisfied if–

(a) the group applies customer due diligence and record-keeping requirements and programmes against money laundering;

(b) the implementation of the customer due diligence and record-keeping requirements under paragraph *(a)* and the anti-money laundering programmes are supervised at a group-level by the relevant Supervisory Authority; and

(c) any higher country risk, as identified on a FATF list as a country with strategic anti-money laundering deficiencies, is adequately mitigated by the anti-money laundering policies of the group.

(1G) A financial institution or listed business shall conduct ongoing due diligence on a business relationship including—

(a) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the financial institution's or listed business' knowledge of the customer, their business and risk profile, including where necessary, source of funds; and

(b) ensuring that documents, data or information collected under the customer due diligence process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers.

(2) Whenever a financial institution or listed business knows or has reasonable grounds to suspect that the funds used for a transaction are or may be the proceeds of money laundering or any other criminal conduct, the financial institution or listed business shall apply the procedures or policies identified in this regulation.

(3) The financial institution or listed business shall—

(a) request evidence of the identity of the customer in accordance with its compliance programme established under regulation 7*(a)* and record all the information received; and

(b) implement any other customer identification policies and procedures required to prevent money laundering.

(4) Where in the course of a business relationship or one-off transaction a financial institution or listed business undertakes a transaction with a financial institution or other persons from another country, contact shall be made with appropriate persons in that country for satisfactory evidence of the identity of the customer before completing the transaction.

(5) Where satisfactory customer due diligence information has not been obtained, the business relationship or one-off transaction shall not proceed any further and the matter shall be reported to the Compliance Officer who shall consider whether a suspicious transaction or activity report shall be filed with the FIU.

(6) Where the person to whom satisfactory evidence of identity is presented, knows or has reasonable grounds for believing that the applicant for business is a money or value transfer service operator, satisfactory evidence of identity shall also include documents identifying the official name of the business and its owners or directors in accordance with this Part.

(7) For the purposes of this regulation, "satisfactory evidence of identity" means—

(a) in relation to an individual, evidence that is reasonably capable of establishing or does in fact establish that the applicant for business is the person whom he claims to be; and

(b) in relation to a corporation or other business arrangement, evidence that the corporation or other business exists and evidence of the identity of its directors, partners or persons of like status in the business arrangement.

(8) Where a financial institution or listed business suspects that money laundering has occurred in respect of one of its customers and the financial institution or listed business reasonably believes that if the customer due diligence process is carried out, the customer in respect of whom the financial institution or listed business is suspicious, will be tipped-off, the financial institution or listed business may file a Suspicious Transaction Report instead of performing the customer due diligence requirements of this Part.

Beneficial owner. [392/2014].

12. (1) A financial institution or listed business shall identify and take reasonable measures to verify the identity of the beneficial owner of any accounts held at the financial institution or listed business or potential accounts and for that purpose, shall request original identification documents, data or other information from an applicant for business.

(2) Where a beneficial owner or customer is a legal person or where there is a legal arrangement, the financial institution or listed business shall—

(a) verify that any person purporting to act on behalf of the legal person or legal arrangement is so authorised and identify and verify the identity of that person;

(b) verify the legal status of the legal person or legal arrangement;

(c) understand the nature of the customer's business and its ownership and control structure; and

(d) determine who are natural persons who have effective control over a legal person or legal arrangement.

(3) ***(Repealed by LN 392/2014).***

(4) Where a financial institution or listed business having monitored transactions undertaken in the course of a business relationship, knows or has reasonable grounds to believe that suspicious activities or suspicious transactions have taken place, these activities or transactions shall be reported to the FIU in accordance with the Act.

(5) For the purpose of this regulation—

"beneficial owner" means the person who ultimately owns and controls an account, or who exercises ultimate control over a legal person or legal arrangement; and

"legal arrangement" includes an express trust.

Representative applicant. [392/2014].

13. (1) Where an applicant for business acts or appears to act as a representative of a customer, the financial institution or listed business shall—

(a) take the measures necessary to ensure that the applicant is legally authorised to act for the customer; and

(b) conduct customer due diligence on the applicant to identify and verify the identity of that person in accordance with regulations 15(2) and 16(2).

(2) ***(Repealed by LN 392/2014).***

(3) The identity of the customer referred to in this regulation shall be ascertained by reference to at least two forms of identification from among those listed in regulations 15 and 16.

(4) In the case where the applicant for business acts or appears to act for a customer, who or which is based in another country, the financial institution or listed business may process a transaction under this regulation only where there are reasonable grounds for believing that the customer for business is—

(a) in the case of a legal person regulated by an overseas supervisory authority; or

(b) based in a country where there are laws that give effect to the Forty Recommendations of the Financial Action Task Force.

Risk-based approach. [392/2014].

14. (1) A financial institution or listed business may apply simplified customer due diligence measures to obtain evidence of the identity of a person in any of the following circumstances:

(a) where the financial institution or listed business carries out a one-off transaction with a third party under regulation 13, pursuant to an introduction effected by a regulated person who has provided written assurance that evidence of the identity of the third party introduced by him has been obtained, recorded and can be made available on request;

(b) in relation to a pension fund plan, superannuation or similar scheme that provides

retirement benefits to employees, where contributions are made by way of deductions from wages and the pension fund plan rules do not permit the assignment of the interest of a member under the pension fund plan;

(c) where the customer is a public authority;

(d) in relation to life insurance policies where the annual premium is no more than six thousand dollars or a single premium of no more than fifteen thousand dollars;

(e) in relation to insurance policies for pension fund plans where there is a no surrender clause and the policy cannot be used as collateral;

(f) where the customer is a public company listed on the Trinidad and Tobago Stock Exchange; and

(g) where the customer is a financial institution regulated by the Central Bank or the Trinidad and Tobago Securities and Exchange Commission.

(2) Where money laundering risks are higher, financial institutions or listed businesses shall perform enhanced due diligence.

(3) Simplified customer due diligence measures may also be performed by a financial institution or listed business where lower risks have been identified either through a national risk assessment or where a national risk assessment does not exist, through an adequate analysis of risk by the financial institution or listed business.

(4) Simplified measures under subregulation (3) shall be commensurate with the lower risk factors but shall not be used when there is a suspicion of money laundering or where specific higher risk scenarios apply.

New business relationship. [392/2014].

15. (1) The financial institution or listed business shall on initiating a business relationship or transaction with an applicant, obtain relevant documentation on the applicant as follows:

(a) full name of the applicant(s);

(b) permanent address and proof thereof;

(c) date and place of birth;

(d) nationality;

(e) place of business/occupation where applicable;

(f) occupational income where applicable;

(g) signature;

(h) purpose and intended nature of the proposed business relationship or transaction and source of funds; and

(i) any other information deemed appropriate by the financial institution or listed business.

(2) A valid passport, national identification card or driver's licence shall be proof of identification and shall also be obtained or examined by the financial institution or listed business.

(3) Where the business relationship involves a foreign customer a reference shall be sought from the foreign customer's bank.

(4) Where original documents are not available, copies shall be acceptable only where they are certified by identification.

(5) A financial institution or listed business shall put special customer due diligence policies in place to address the specific concerns associated with non-face-to-face business relationships or transactions.

Identity of a business customer. [392/2014].

16. (1) The requirements outlined in regulation 15, with appropriate adaptations, shall apply to a business customer and the financial institution or listed business shall verify the identity of the directors and other officers of a company, partners of a partnership, account signatories, beneficial owners and sole traders by means of documentary evidence.

(2) In addition, the financial institution or listed business shall obtain, to the extent relevant to a proposed business relationship or transaction—

(a) the Certificate of Incorporation or Certificate of Continuance;

(b) the Articles of Incorporation;

(c) a copy of the bye-laws, where applicable;

(d) management accounts for the last three years for self-employed persons and businesses which have been in operation for more than three years or three-year estimates of income for self-employed persons and businesses which have been in operation for less than three years; and

(e) information on the identity of shareholders holding more than ten per centum of the paid up share capital of the company.

(3) In the event that an applicant for business cannot satisfy the requirements of subregulation (2)*(d)*, the financial institution or listed business may request other forms of proof of the source of funds to be used for the transaction.

Trust fiduciaries. [392/2014].

17. (1) Where an applicant for business is a trustee, nominee or other legal arrangement, in addition to the requirements outlined in regulation 15, the financial institution or listed business shall obtain the following information:

(a) evidence of the appointment of the trustee by means of a certified copy of the Deed of Trust;

(b) the nature and purpose of the trust; and

(c) verification of the identity of the trustee.

(2) The verification of the identity of a beneficiary of a trust or other legal arrangement shall be performed before the pay-out or the exercise of vested rights.

Discrepancies in information. [392/2014].

18. (1) Where at any time, a financial institution or listed business is in doubt about the veracity and adequacy of any information previously given by a customer, due diligence procedures shall be performed and where there are discrepancies in the information previously provided, the financial institution or listed business shall make every effort to obtain the correct information.

(2) Where the information under subregulation (1) cannot be verified, the financial institution or listed business shall report the matter to the Compliance Officer and discontinue any business relationship with the customer.

(3) On receipt of a report in subregulation (2), the Compliance Officer shall consider whether a suspicious transaction or activity report shall be submitted to the FIU.

Anonymous accounts. [392/2014].

19. (1) A financial institution or listed business shall not keep anonymous accounts or accounts in fictitious names and shall identify and record the identity of customers in accordance with this Part.

(2) Where a new account is opened or a new service is provided by a financial institution or listed business and the customer purports to be acting on his own behalf but the financial institution or listed business suspects otherwise, the institution or listed business shall verify the true identity of the beneficial owner and if it is not satisfied with the response of the customer, it shall terminate all relations with that customer forthwith and report the matter to the Compliance Officer.

(3) On receipt of a report under subregulation (2), the Compliance Officer shall consider whether to submit a suspicious report to the FIU.

Politically exposed persons. [392/2014].

Ch. 2:01.

20. (1) In this Regulation—

"important political party officials" means the chairman, deputy chairman, secretary and treasurer of a political party registered under the Representation of the People Act or individuals holding equivalent positions in a foreign country;

"politically exposed person" means—

(a) individuals such as the Head of State or Government, senior politician, senior government, judicial or military officials, senior executives of State-owned corporations and important political party officials who are or have been entrusted with prominent functions–

(i) by a foreign country; or

(ii) domestically for Trinidad and Tobago;

(b) persons who are or have been entrusted with a prominent function by an international organisation which refers to members of senior

management such as directors and members of the board or equivalent functions;

(c) an immediate family member of a person referred to in paragraph *(a)* such as the spouse, parent, siblings, children and children of the spouse of that person; and

(d) any individual publicly known or actually known to the relevant financial institution to be a close personal or professional associate of the persons referred to in paragraphs *(a)* and *(b)*;

"senior executive of State-owned corporations" means—

(a) the chairman, deputy chairman, president or vice-president of the board of directors;

(b) the managing director, general manager, comptroller, secretary or treasurer; or

(c) any other person who performs for the body corporate functions similar to those normally performed by the holder of any office specified in paragraph *(a)* or *(b)* and who is duly appointed to perform those functions;

"senior politician" means—

(a) a person elected to office in national, local or Tobago House of Assembly elections; or

(b) a person appointed to serve as a Senator in the Parliament of Trinidad and Tobago, appointed to serve on the Tobago House of Assembly under the Tobago House of Assembly Act or selected to serve as an Alderman in a Municipality or Regional Corporation under the Municipal Corporations Act;

Ch. 25:03.

Ch. 25:04

"senior government official" means a Permanent Secretary or any other person appointed as an Accounting Officer under the Exchequer and Audit Act or individual holding equivalent positions in a foreign country.

Ch. 69:01.

(2) A financial institution or listed business shall put appropriate measures in place to determine whether an applicant for business, an account holder or a beneficial owner is a politically exposed person.

(3) Where the applicant for business has been found to be a politically exposed person, in addition to the identification data required by regulation 15, enhanced due diligence measures shall be conducted in accordance with this regulation.

(3A) Notwithstanding subregulation (3), where the politically exposed person is an individual referred to in paragraphs *(a)*(ii) and *(b)* of the definition of a politically exposed person, enhanced due diligence measures shall only be applied where higher risks are identified.

(3B) Subregulation (3A) also applies to individuals under subregulation (1)*(c)* and *(d)* who are persons to whom subregulation (1)*(a)*(ii) and *(b)* refer.

(4) The permission of a senior management official of the financial institution or listed business is required before establishing a business relationship with a politically exposed person or continuing a business relationship with an exsiting customer who becomes a politically exposed person.

(5) A financial institution or listed business shall also take reasonable measures to determine the source of wealth and the source of funds of the persons referred to in regulation 20(2) and where the institution or business has entered a business relationship with the person, it shall conduct enhanced on-going monitoring of that relationship.

(6) Where information collected by a financial insitution or listed business on a politically exposed person cannot be verified or is later determined to be false, the financial institution or listed business shall immediately discontinue any business relationship with the politically exposed person and shall report the matter to the Compliance Officer.

Correspondent banking. [392/2014].

21. (1) In this regulation and regulation 22, "correspondent banking" means the provision of banking services by one bank in Trinidad and Tobago ("the correspondent bank") to another bank ("the respondent bank") in a foreign country.

(2) A correspondent bank shall—

(a) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information, the reputation of the institution and the quality of supervision including whether it has been subject to a money laundering investigation or regulatory action; and

(b) assess the anti-money laundering controls of the respondent bank.

(3) A correspondent bank shall also—

(a) obtain approval from senior management before establishing new correspondent relationships;

(b) record and clearly understand the respective anti-money laundering responsibilities of the correspondent and the respondent banks;

(c) with respect to payable through accounts, satisfy themselves that the respondent bank—

(i) has performed customer due diligence obligations on its customers that have direct access to the accounts of the correspondent bank; and

(ii) is able to provide relevant customer due diligence information upon request to the correspondent bank.

(d) ***(Repealed by LN 392/2014).***

(4) ***(Repealed by LN 392/2014).***

Shell banks. [392/2014].

22. (1) A financial institution shall not enter into or continue a correspondent banking relationship with a shell bank.

(2) A financial institution shall ensure that the respondent financial institution in a foreign country prohibits a shell bank from using the accounts of the respondent financial institution.

(3) For the purposes of this regulation—

"shell bank" means a bank which has no physical presence in the

country in which it is incorporated and licensed and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision; and

"physical presence" means that a meaningful mind and management is located within the country and the existence simply of a local agent or low level staff does not constitute physical presence.

Technological developments. [392/2014].

23. (1) A financial institution and a listed business shall identify and assess the money laundering risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products.

(2) A financial institution and a listed business shall in respect of new products and new business practices—

(a) undertake the risk assessments prior to the launch or use of such products, practice and technologies; and

(b) take appropriate measures to manage and mitigate risks.

PART IV

CUSTOMER DUE DILIGENCE PROVISIONS FOR INSURANCE COMPANIES

General requirements. [392/2014].

24. (1) An insurance company shall undertake its customer identification procedures in respect of a party entering into an insurance contract but where the party acts or appears to act on behalf of a principal, the true nature of the principal shall be established and appropriate enquiries made, especially if the policy holder is accustomed to acting on the instructions of the customer.

(2) If it is necessary for sound business reasons to enter into an insurance contract before verification of the identity of

the customer can be completed, this action should be subject to stringent controls to ensure that—

(a) verification procedures are completed as soon as reasonably practicable;

(b) anti-money laundering risks are effectively managed; and

(c) any funds payable under the contract are not passed to third parties before identification procedures are completed.

(3) Any decision to enter into a contract in the circumstances of subregulation (2), shall be made by a senior manager and recorded in writing.

Verification of customer identity.

25. (1) An insurance company undertaking verification of the identity of a customer, shall establish to its reasonable satisfaction that every party relevant to the application for insurance, actually exists.

(2) Where there is a large number of parties to the application, for example, in the case of group life pensions, the requirement of this regulation may be fulfilled by carrying out identification procedures on a limited group only, such as the principal shareholder, or the main directors of a company.

(3) Where a transaction involves an insurer and an intermediary, each party shall consider its own position separately to ensure that its own obligations regarding identification and records are duly discharged.

Reinsurers. [392/2014].

26. Prior to entering into any reinsurance contract, the insurance company shall verify the identity of the reinsurer to ensure that the monies payable under the reinsurance contract are paid only to bona fide reinsurers.

Payment of claims. [392/2014].

27. (1) Where claims and other monies are to be paid to persons, partnerships and other forms of business arrangements, the identity of the proposed recipient of those payments shall be the subject of identification procedures.

(2) A financial institution shall conduct the following customer due diligence procedures on the beneficiaries of a life insurance policy or other investment-related insurance policy as soon as the beneficiary is identified or designated:

(a) where the beneficiary identified is a specifically named natural or legal person or legal arrangement, by the taking of the name of the person; and

(b) where the beneficiary is designated by characteristics or by class or by other means, by obtaining sufficient information concerning the beneficiary to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.

(3) In respect of beneficiaries under subregulation (2), the verification of the identification of the beneficiary shall take place at the time of the payout.

(4) Financial institutions shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced due diligence is applicable.

(5) Where a financial institution determines that a beneficiary who is a legal person or legal arrangement presents a higher risk, it should take enhanced measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of the payout.

(6) A financial institution shall, up until the time of payment in relation to life insurance policies, take reasonable measure to determine whether the beneficiaries or the beneficial owner of the beneficiaries are politically exposed persons.

(7) Where a person under subregulation (6) is a politically exposed person, the relevant person in the financial institution shall—

(a) inform senior management in the financial institution, prior to the payout of the policy proceeds;

(b) conduct enhanced due diligence on the whole business relationship with the policy holder; and

(c) consider making a suspicious transaction report.

Payments on surrender of policy.

28. Whether a transaction is—

(a) a one-off transaction; or

(b) carried on in the course of a business relationship,

and the value of the transaction is ninety thousand dollars or more the identity of the customer shall be verified before the insurance company surrenders the payments to the customer.

Exceptions to verification of identity.

29. Verification of the identity of a party to an insurance contract is not required—

(a) where the applicant for an insurance contract is a financial institution or listed business operating in Trinidad and Tobago and is regulated by a supervisory authority; and

(b) where an insurance company offers the facility of money due to the insured in respect of one policy of insurance to fund the premium payments for another policy of insurance and the insured uses that facility.

Transactions not linked.

30. In this Part, transactions which are separated by an interval of three months or more are not required to be treated as linked transactions.

PART V

RECORD KEEPING

Records. [392/2014].

31. (1) Subject to regulation 33 a financial institution or listed business, shall retain records of—

(a) all domestic and international transactions;

(b) identification data obtained through the customer due diligence process;

(c) account files and business correspondence; and

(d) the results of any analysis undertaken related to an account or transaction,

in electronic or in written form, for a period of six years to enable the financial institution or listed business to comply with lawful requests for information from auditors, other competent authorities and law enforcement authorities that request these

records, for purposes of criminal investigations or the prosecution of persons charged with criminal offences.

(2) The period referred to in subregulation (1), may be extended at the request of the FIU or other Supervisory Authority.

(3) Transaction records referred to in subregulation (1), shall be—

(a) kept in the format specified by the FIU and contain sufficient detail to permit reconstruction of individual transactions; and

(b) made available to the Supervisory Authority, upon its request and within such time frame as specified.

Money or value transfer service providers to keep list of agents. [392/2014].

31A. A person who carries on money or value transfer services shall maintain a list of all his or its subagents which shall be provided to the relevant supervisory authority upon request.

Record keeping procedures. [392/2014].

32. (1) The records referred to in regulation 31, shall contain the following:

(a) details of a transaction, including the amount of and type of currency used for the transaction carried out and account files and business correspondences, including the results of any analysis undertaken by the financial institution or listed business, in the course of a business relationship or a one-off transaction to provide the evidence necessary for the prosecution of criminal activity; and

(b) in the case of evidence of identity obtained in accordance with regulations 15, 16 and 17—

(i) a copy of that evidence;

(ii) the address of the place where a copy of that evidence may be obtained; or

(iii) information enabling the evidence of identity to be obtained a second time, but only where it is not reasonably practicable for the financial institution or listed business to comply with subregulation (i) or (ii).

(2) The period of six years for which the records referred to in regulation 31(1) shall be kept is determined as follows:

(a) in the case where a financial institution or listed business and an applicant for business have formed a business relationship, at least six years from the date on which the relationship ended; or

(b) in the case of a one-off transaction, or a series of such transactions, at least six years from the date of the completion of the one-off transaction or, as the case may be, the last of the series of such transactions.

(3) Where a financial institution or listed business is an appointed representative, its principal shall ensure compliance with this regulation in respect of any financial transaction carried out by the financial institution or listed business for which the principal has accepted responsibility.

Wire transfers. [392/2014].

33. (1) The information listed in regulation 34 concerning the originator and beneficiary of the funds transferred, shall be included on all domestic and cross-border wire transfers.

(2) A financial institution that participates in a business transaction via wire transfer shall relay the identification data about the originator and recipient of the funds transferred, to any other financial institution participating in the transaction.

(3) Where the originator of the wire transfer does not supply the transfer identification data requested by the financial institution, the transaction shall not be effected and a suspicious activity report shall be submitted to the FIU.

(4) A financial institution shall ensure that where several individual cross-border or domestic wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries—

(a) the batch file contains the required and accurate originator information and beneficiary information, that is fully traceable within the beneficiary country; and

(b) the account number of the originator or unique transaction or reference number is included.

(5) For the purposes of this regulation, "batch file" means a series of transactions bundled together.

(6) A beneficial financial institution who receives funds from an originator and an intermediary financial institution who acts between the originator and the beneficiary financial institution shall—

(a) take reasonable measures to identify domestic and cross-border transfers that lack the required originator or beneficiary information; and

(b) have risk-based policies and procedures to–

(i) execute, reject or suspend a wire transfer lacking the required originator or beneficiary information; and

(ii) determine follow-up action in respect of subparagraph (i).

Information required for transfer. [392/2014].

34. (1) Domestic and cross-border wire transfers shall be accompanied by accurate and meaningful identification data on the originator of the transfer which shall be kept in a format determined by the FIU.

(2) Information accompanying a domestic or cross-border transfer shall consist of—

(a) the name of the originator of the transfer;

(b) the address or a national identification number or a passport number of the originator;

(c) the account number of the originator and in the absence of an account, a unique transaction reference number which permits tracing of the transaction;

(d) the name of the beneficiary; and

(e) the beneficiary account number where such an account is used to process the transactions or, in the absence of an account, a unique transaction reference number which permits tracing of the transaction.

(2A) Notwithstanding subregulation (2)*(b)*, where the originating financial institution is a money or value transfer

service provider, the information required shall be both the address and the national identification number or passport number of the originator.

(2B) An originating financial institution shall verify the accuracy of the information of the originator required under subsection (2).

(3) Information accompanying a domestic wire transfer shall be kept in a format which enables it to be produced immediately, to the FIU.

(4) The financial institution shall put provisions in place to identify wire transfers lacking complete originator information so that the lack of complete originator information shall be considered as a factor in assessing whether a wire transfer is or related transactions are suspicious and thus required to be reported to the FIU.

(5) Where a domestic or cross-border wire transfer is for a sum over six thousand dollars, the beneficiary financial institution shall verify the identity of the beneficiary where not previously identified and maintain a record in accordance with regulation 31.

Exemption for wire transfers.

35. A wire transfer from one financial institution to another, is exempted from the provisions of this Part, where both the originator and beneficiary are financial institutions acting on their own behalf.

Continuous analysis. [392/2014].

36. Where a suspicious transaction or suspicious activity report has been submitted to the FIU, as a result of which there is an on-going analysis, the financial institution or listed business shall—

(a) retain the related records for the period requested by the FIU or until otherwise ordered by the Court; and

(b) co-operate fully with any instructions given by the Director or such other person as he may appoint.

Due diligence to be applied to existing customers. [392/2014].

37. A financial institution or listed business shall apply due diligence requirements to existing customers on the basis of

materiality and risk, and conduct due diligence on such existing relationships at appropriate times, taking into account whether and when customer due diligence measures have been taken and the adequacy of data obtained.

Register of enquiries.

38. (1) The financial institution or listed business shall maintain a register of all enquiries made to them by any law enforcement authority or other local or foreign authorities acting under powers provided by the relevant laws or their foreign equivalent.

(2) The register shall be kept separate from other records and contain as a minimum the following details:

(a) the date and nature of the enquiry;

(b) the name and agency of the enquiring officer; and

(c) the powers being exercised.

PART VI

SUPERVISORY AUTHORITY

Delegation by Supervisory Authority.

39. A Supervisory Authority may, with the approval of the Director, delegate its function to any person who is suitably qualified or experienced in the operations of a specific type of financial institution or listed business.

Measures to ensure compliance. [392/2014].

40. A Supervisory Authority may take such regulatory measures as prescribed by the Act or legislation under which the financial institution or listed business was licensed or registered, to ensure compliance with these Regulations in respect of—

(a) financial institutions licensed under the Financial Institutions Act; Ch. 79:09.

(b) an insurance company, an agent and a broker registered under the Insurance Act; Ch. 84:01.

(c) exchange bureaus licensed under the Exchange Control Act; Ch. 79:50.

(d) ***(Repealed by LN 392/2014);***

(e) a broker-dealer, underwriter or investment adviser registered under the Securities Act; and Ch. 88:02.

(f) any other financial institution or listed business in accordance with the Financial Intelligence Unit of Trinidad and Tobago Act. Ch. 72:01.

Supervisory Authority to issue guidelines. [392/2014].

40A. For the purposes of these Regulations, the relevant Supervisory Authority may issue guidelines to financial institutions or listed businesses, indicating—

(a) the simplified customer due diligence and enhanced due diligence measures which may be applied under these Regulations;

(b) the circumstances that may be considered in determining whether a transaction or activity is suspicious; and

(c) any other matter pertaining to the Act and these Regulations.

Reports to the FIU. [392/2014].

41. (1) Where a Supervisory Authority, in light of any information obtained by it, knows or has reasonable grounds for believing that a financial institution or listed business has or may have been engaged in money laundering, the Supervisory Authority shall disclose the information or belief to the FIU as soon as is reasonably practicable.

(2) Subject to subregulation (4), where any person receives information through which he knows or has reasonable grounds for believing that a financial institution or listed business has or may have been engaged in money laundering or other criminal conduct, that person shall disclose the information to the FIU.

(2A) A requirement to disclose information under subregulation (2) also applies where the suspicion arises out of a one-off transaction.

(3) Where any person exercising delegated authority under regulation 39, in the light of any information obtained by him, knows or has reasonable grounds for believing that someone has or may have been engaged in money laundering, that person shall, as soon as is reasonably practicable, disclose the knowledge or belief either to the FIU or to the Supervisory Authority by whom he was appointed or authorised.

(4) Where information has been disclosed to the FIU under this regulation, the FIU may only disclose the information

in connection with the investigation of an offence under any law or for the purpose of any proceedings relating to the offence.

(5) A disclosure made under this regulation shall not be construed as a breach of any restriction on the disclosure of information, however that restriction may have been imposed.

PART VII

OFFENCES AND PENALTIES

Offences and penalties.

42. A financial institution or listed business which does not comply with these Regulations, commits an offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act.

Offences by companies, etc.

43. (1) Where a company commits an offence under these Regulations, any officer, director or agent of the company—

(a) who directed, authorised, assented to, or acquiesced in the commission of the offence; or

(b) to whom any omission is attributable,

is a party to the offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act whether or not the company has been prosecuted or convicted.

(2) Where a partnership commits an offence under these Regulations and it is proved that the partner acted according to paragraph *(a)* or *(b)* of subregulation (1), the partner and the partnership are liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act.

(3) Where an unincorporated association, other than a partnership, commits an offence and it is proved that an officer or member of the governing body acted according to paragraph *(a)* or *(b)* of subregulation (1), that officer or member as well as the unincorporated body, commits an offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act.

(4) If the affairs of a body corporate are managed by its members, subregulation (1), applies in relation to the acts and omissions of a member in connection with his functions of management, as if he were a director of the body.

(5) In this regulation—

"officer", in relation to a body corporate, means a director, manager, secretary, Chief Executive Officer, member of the committee of management or a person acting in such a capacity; and

"partner" includes a person purporting to act as a partner.

Prosecutions.

44. Proceedings for an offence under these Regulations may not be instituted without the approval of the Director of Public Prosecutions.

PART VIII

MISCELLANEOUS

Repeal and savings. [213/2009].

45. (1) The Financial Obligations Regulations, 2009 are hereby repealed.

(2) Notwithstanding the repeal of the Financial Obligations Regulations, 2009, nothing done pursuant to or actions taken in respect of those regulations are invalid.