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EXTRAORDINARY

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PART I: SECTION (I) – GENERAL

Government Notifications

L.D.D.B. 3/2006

Financial Transactions Reporting Act, No. 6 of 2006

RULES made by the Financial Intelligence Unit under section 2 of the Financial Transactions Reporting Act, No. 6 of 2006.

Financial Intelligence Unit

10th January, 2018.
Colombo.

Rules

1. These Rules may be cited as the Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018.
2. These Rules shall apply to the following designated non-finance businesses (hereinafter referred to as the “non-finance business”):-
 - (a) casinos, gambling houses or conducting of a lottery, including a person who carries on such a business through the internet when their customers engage in financial transactions equal to or above the threshold specified in paragraph (2) of rule 9;
 - (b) real estate agents, when they are involved in transactions for their customers in relation to the buying and selling of real estate;



- (c) dealers in precious metals and dealers in precious and semi-precious stones, including but not limited to, metals and stones covered by the National Gem and Jewellery Authority Act, No. 50 of 1993 when they engage in cash transactions with a customer, equal to or above the threshold specified in paragraph (2) of rule 9;
- (d) lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their clients in relation to any of the following activities :-
 - (i) buying and selling of real estate;
 - (ii) managing of client money, securities or other assets;
 - (iii) management of bank, savings or securities accounts;
 - (iv) organization of contributions for the creation, operation or management of companies; and
 - (v) creation, operation or management of legal persons or arrangements and the buying and selling of business entities;
- (e) a trust or company service provider not otherwise covered by paragraphs (a) to (d) which as a business provides any one or more of the following services to third parties :-
 - (i) formation or management of legal persons;
 - (ii) acting as or arranging for another person to act as, a director or secretary of a company, a partner or a partnership or a similar position in relation to other legal persons;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or for any other legal person or arrangement;
 - (iv) acting as, or arranging for another person to act as, a trustee of an express trust; and
 - (v) acting as, or arranging for another person to act as, a nominee shareholder for another person.

3. Every non-finance business shall take such measures specified in these rules for the purpose of identifying, assessing and managing money laundering and terrorist financing risks posed by its customers, by conducting ongoing Customer Due Diligence (hereinafter referred to as “CDD”) based on the “risk based approach”.

PART I

Money Laundering and Terrorist Financing Risk

Risk Management in General

4. The intensity and extensiveness of risk management functions shall be in compliance with the “risk based approach” and be proportionate to the nature, scale and complexity of the activities of the non-finance business and the level of money laundering and terrorist financing risks.

5. Every non-finance business shall take appropriate measures in terms of rules 6 and 7 to identify, assess and manage its money laundering and terrorist financing risks in relation to customers, countries or geographical areas and products, services, transactions or delivery channels.

6. Subject to the provisions of rule 7, every non-finance business which enters into a continuing business relationship, or conducts any transaction shall –

- (a) conduct appropriate risk assessment including the following:-
 - (i) considering all relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;
 - (ii) documenting their risk assessments and findings;
 - (iii) keeping the assessment up-to-date through a periodic review; and
 - (iv) providing risk assessment information to the supervisory authority through appropriate mechanisms;
- (b) have proper risk control and mitigation measures including the following:-
 - (i) having policies, controls and procedures to manage and mitigate money laundering and terrorist financing risks that have been identified;
 - (ii) monitoring the implementation of those policies, controls, procedures and to enhance them, if necessary;
 - (iii) taking enhanced measures to manage and mitigate the risks where higher risks are identified; and
 - (iv) taking simplified measures where lower risks are identified;
- (c) conduct risk profiling on its customers considering the following:-
 - (i) risk level according to customer category (e.g: different types of customers such as resident or non-resident, occasional or one-off, legal persons, politically exposed persons and customers engaged in different types of occupations);
 - (ii) geographical location of business, or country of origin or country of residence or both of the customer;
 - (iii) products, services, transactions or delivery channels of the customer (e.g. cash-based, face-to-face or non face-to-face, cross-border); and
 - (iv) any other information regarding the customer;
- (d) upon the initial acceptance of the customer, regularly review and update the customer's risk profile based on the level of money laundering and terrorist financing risks.
- (e) risk control and mitigation measures applied for each customer or customer category shall commensurate with the assessed risk level of the customer or customer category.
- (f) formulate internal policies, approved by its Senior Management or Board of Directors, subject to any written law in force for the time being on anti-money laundering and countering the terrorist financing.
- (g) develop detailed procedures and controls in compliance with the policy formulated under paragraph (f) including the following:-
 - (i) conduct CDD measures and maintain record retention mechanism;
 - (ii) detection and internal reporting procedure of unusual or suspicious transactions;
 - (iii) reporting suspicious transactions to the Financial Intelligence Unit;
 - (iv) develop and implement comprehensive employee due diligence and screening procedures at the time of appointing or hiring employees on permanent basis or any other basis;

- (v) maintain an independent audit function subject to relevant written laws;
- (vi) provide training programmes for relevant employees on identification of suspicious transactions, effectively managing the risk of money laundering and terrorist financing.

Sole Practitioners and Proprietors

7. Notwithstanding the provisions of rule 6, lawyers, notaries, other independent legal professionals and accountants who, being sole practitioners or sole proprietors, carry out any transaction for their clients, within the meaning of the Financial Transactions Reporting Act, No. 6 of 2006 (hereinafter referred to as “the Act”), shall follow the guidelines issued from time to time by the Financial Intelligence Unit subject to the Act and any regulation or rule issued thereunder, taking into account the level of risk posed by the relevant sector.

Group of Companies

8. (1) Every non-finance business shall ensure that their foreign branches or majority owned subsidiaries if any, operate in any country which provides less stringent legal provisions for combatting money laundering and countering of terrorist financing than those of Sri Lanka, are in compliance with these rules.

(2) Where it is not permitted by the laws of the relevant foreign country to act as provided for in paragraph (1), every such non-finance business shall implement appropriate measures not contradictory to the laws of the relevant foreign country and inform the Financial Intelligence Unit and the relevant supervisory authority.

PART II

Customer Due Diligence (CDD)

CDD in General

9. (1) Every non-finance business shall conduct the CDD measures specified in these rules subject to the provisions of this Part, for the purposes of section 2 of the Act.

(2) Notwithstanding the provisions of paragraph (1), any non-finance business specified in the following sub-paragraphs, shall conduct the CDD measures specified in this Part, for the situations specified in each such sub-paragraph :-

- (a) casinos, gambling houses or conducting of a lottery, including a person who carries on such a business through the internet when a customer engages in financial transactions in Sri Lankan Rupees or in any foreign currency equivalent to or above United States Dollars 3000 ; or
- (b) dealers in precious metals and dealers in precious and semi-precious stones, including but not limited to, metals and stones covered by the National Gem and Jewellery Authority Act, No. 50 of 1993 where the respective dealer engages in any cash transaction with a customer in Sri Lankan Rupees or in any foreign currency equivalent to or above United States Dollars 15000.

10. For the purpose of this Part every non-finance business shall –

- (a) identify the customer and verify that customer’s identity using reliable, independent source documents, data or information;
- (b) verify whether any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of such person;
- (c) identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using relevant information or data obtained from a reliable source, to the satisfaction of the non-finance business;

- (d) understand and, where relevant, obtain information on, the purpose and intended nature of the business relationship.

11. Every non-finance business shall at the minimum, obtain the following information for the purpose of conducting CDD, on a customer and beneficial owner :-

- (a) the full name;
- (b) permanent residential or mailing address;
- (c) occupation, name of employer, business or principal activity;
- (d) an official personal identification number or any other identification document that bears a photograph of the customer or beneficial owner such as the National Identity Card, passport or driving license;
- (e) date of birth;
- (f) nationality;
- (g) source of funds;
- (h) purpose of transaction;
- (i) telephone numbers (residence, office or mobile).

12. Every non-finance business shall verify the documents specified in paragraph (d) of rule 11, by requiring the customer or beneficial owner, to furnish the original document and make a copy of the said document.

Timing of Verification

13. Every non-finance business shall verify the identity of the customer and beneficial owner before, or during, the course of entering into a business relationship.

14. Where a non-finance business forms a suspicion of money laundering or terrorist financing, and it reasonably believes that conducting the CDD measures would tip off the customer, it may proceed without conducting the CDD measures, but shall immediately file a Suspicious Transaction Report in compliance with section 7 of the Act.

15. Where a customer or a beneficial owner is rated as a low risk, it shall be lawful for the non-finance business to apply CDD measures by obtaining minimum information specified in rule 11.

Enhanced CDD

16. Every non-finance business shall conduct the following enhanced CDD measures, in addition to the measures specified in rule 11, where the assessed money laundering and terrorist financing risk for a customer has been rated as a high risk :-

- (a) obtain additional information on the customer and beneficial owner (e.g. volume of assets and other information from public databases);
- (b) obtain approval from the Senior Management , if any, before establishing or in the case of an existing customer for continuing such business relationship with the customer;
- (c) obtain additional information on the intended nature of the business relationship;
- (d) regularly update the identification data of the customer and the beneficial owner; and
- (e) enquire and record the reasons for prospective or performed transactions.

Legal Persons and Legal Arrangements

17. Every non-finance business shall, in the case of a customer that is a legal person or legal arrangement, –

- (a) understand the nature of the customer's business, its ownership and control structure;
- (b) identify the customer and verify its identity through the following information:-
 - (i) name, type of legal person or legal arrangement and proof of existence, such as the Memorandum, Articles, Certificate of Incorporation or registration document (certified true copies or notarially executed copies may be accepted) or any other reliable references to verify the identity of the customer;
 - (ii) the powers that regulate and bind the customer such as directors' resolution, as well as the names of relevant persons having senior management positions; and
 - (iii) the address of the registered office and if different, the principal place of business.

18. In order to identify the natural person if any, who ultimately has controlling ownership interest in a legal person, a non-finance business shall at the minimum obtain and take reasonable measures to verify the following:-

- (a) identity of all directors and shareholders with equity interest of more than ten *per cent* with the requirement imposed on the legal person to inform of any change in such directors and shareholders;
- (b) if there is a doubt as to whether the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interest, the identity of the natural person, if any, exercising control of the legal person or arrangement through other means;
- (c) authorization given for any person to represent the legal person either by means of Board Resolution or otherwise;
- (d) where no natural person is identified under the preceding provisions, the identity of the relevant natural persons who hold the positions of senior management;
- (e) when a legal person's controlling interest is vested with another legal person, non-finance business shall identify the natural person who controls the legal person to whom the controlling interest is vested with.

19. Every non-finance business shall identify and take every possible measure to verify the identity of beneficial owner of a legal arrangement through the following information:-

- (a) for trusts, the identities of the author of the trust, the trustees, the beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust including those who control through the chain of control or ownership; or
- (b) for other types of legal arrangements, the identities of persons in equivalent or similar positions.

Transactions Where the Natural Person is Not Physically Present

20. (1) A non-finance business may establish a non face to face business relationship or transaction with a customer, only if such non-finance business has in place procedures to address any specific risks associated with non face-to-face business relationships or transactions. Non-finance business shall identify such customers as high risk customers and shall follow rule 16.

(2) The procedures referred to in paragraph (1) shall include –

- (a) precautionary measures in order to avoid the risks posed in establishing and conducting business relationships or transactions through information and communication technology;
- (b) appropriate measures to identify and verify the customer's identity pertaining to the non face-to-face business relationships or transactions that are equally effective as that for customers of face to face business relationships;
- (c) mechanisms for monitoring and reporting of potential money laundering and terrorist financing risks that may be posed in establishing and conducting non face to face business relationships or transactions.

Clubs, Societies and Associations

21. Every non-finance business shall, obtain from customers that are clubs, societies or associations, the relevant identification and constituent documents or other similar documents including certificate of registration and the identification documents of the office bearers or any other persons authorized to represent the relevant club, society or association.

Non-Governmental Organizations, Not-for-Profit Organizations or Charities

22. Every non-finance business shall conduct enhanced CDD measures when entering into a relationship with a Non-Governmental Organization (hereinafter referred to as "NGO") or a Not-for-Profit Organization (hereinafter, referred to as "NPO") and charities.

23. Every non-finance business shall review and monitor all existing relationships with a NGO, NPO or charity to ensure that those organizations, their authorized signatories, members of their governing bodies and the beneficial owners are not linked with any entity or person designated in a list as specified in rule 41, either under the same name or a different name.

Politically Exposed Persons (PEPs)

24. Every non-finance business shall, in relation to politically exposed persons or their immediate family members and close associates,–

- (a) implement appropriate internal policies, procedures and controls to determine if the customer or the beneficial owner is a politically exposed person;
- (b) obtain approval from the Senior Management of the non-finance business, if any, to enter into or continue the business relationship where the customer or the beneficial owner is a politically exposed person;
- (c) identify, by appropriate means, the source of fund and the source of wealth where the customer or the beneficial owner is a politically exposed person; and
- (d) conduct enhanced CDD and ongoing monitoring of their business relationships with the non-finance business.

Existing Customer

25. Every non-finance business shall conduct CDD on existing customers on the basis of materiality and risk which is assessed through considering the following :-

- (a) the nature and circumstances surrounding the transaction including the significance of the transaction;
- (b) any material change in the way the transaction or business relationship is operated; or
- (c) insufficiency of current information on the customer or any change in customer's information.

26. Every non-finance business shall conduct CDD on existing customer relationships at appropriate times, taking into account whether and when CDD measures have previously been taken and the adequacy of data obtained.

27. If an existing customer provides unsatisfactory information relating to CDD, the relationship with such customer shall be treated as a relationship posing a high risk and be subject to enhanced CDD measures.

Customers from High Risk Countries

28. (1) Every non-finance business shall apply enhanced CDD measures to business relationships and transactions with customers from high risk countries.
- (2) The Financial Intelligence Unit in consultation with the Secretary to the Ministry of the Minister to whom the subject of Foreign Affairs has been assigned, shall publish the list of high risk countries on its official website -
- (a) based on the Financial Action Task Force listing; or
- (b) independently taking into account, the existence of strategic deficiencies in anti-money laundering and suppression of terrorist financing policies and not making sufficient progress in addressing those deficiencies in those countries.

29. In addition to enhanced CDD measures, every non-finance business shall apply appropriate counter measures, additional CDD measures, including the following, for countries specified in the list of high risk countries in terms of the provisions of paragraph (2) of rule 28, corresponding to the nature of risk of listed high risk countries:-

- (a) limiting business relationships or financial transactions with identified persons or legal arrangements located in a high risk country; and
- (b) conduct any other measure as may be specified by the Financial Intelligence Unit.

New Technologies (Products, Services and Business Practices)

30. Every non-finance business shall identify and assess the money laundering and terrorist financing risks that may arise in relation to the development of new products, services and business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.

31. Every non-finance business shall -

- (a) undertake the risk assessment prior to the launch or use of new products, services and technologies; and
- (b) take appropriate measures to manage and mitigate the risks which may arise in relation to the development of new products and new business practices.

On-Going Due Diligence

32. Every non-finance business shall conduct on-going due diligence and on-going scrutiny in terms of the provisions of section 5 of the Act on continuing business relationship with its customer, by -

- (a) scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the knowledge of the non-finance business in respect of the customer, their business and risk profile, including where necessary, the source of funds;
- (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 customers from high risk countries; and

(c) taking into consideration the economic background and purpose of any transaction or business relationship which :-

- (i) appears unusual;
- (ii) is inconsistent with the expected type of activity and business model when compared to the volume of transactions;
- (iii) does not have any apparent economic purpose; or
- (iv) gives rise to suspicion as to the legality of such transaction, especially with regard to a complex and large transaction or a transaction involving high risk customers.

33. The frequency of on-going customer due diligence or enhanced on-going customer due diligence, shall commensurate with the level of money laundering and terrorist financing risks posed by the customer based on the risk profile and the nature of transactions.

34. Every non-finance business shall, increase the number and timing of controls applied and select patterns of transactions that need further examination, when conducting enhanced on-going due diligence.

Reliance on Third Parties

35. A non-finance business may rely on a third party financial institution or non-finance business to conduct CDD measures, including the identification of the customer, identification of the beneficial owner and understanding the nature of the business or initiating the business, when it is not practical to do so by the non-finance business itself.

36. Where any non-finance business relies on a third party financial institution or non-finance business to conduct CDD measures, the ultimate responsibility for CDD measures shall remain with the non-finance business relying on the third party, which shall –

- (a) obtain immediately, the necessary information relating to CDD;
- (b) take steps to satisfy itself that copies of identification data and other relevant, documentation relating to CDD requirements will be made available from the third party, upon request without delay;
- (c) satisfy itself that the third party is regulated, supervised or monitored, and has measures to adhere to CDD and record-keeping requirements in compliance with the Act and the rules made thereunder.

37. Every non-finance business which relies on a third party shall –

- (a) have internal policies and procedures, which enables the mitigation of money laundering and terrorist financing risks to the international financial system, including those from countries that have been identified by the Financial Action Task Force as having strategic deficiencies in anti-money laundering and countering of terrorist financing policies:

Provided however, lawyers, notaries, other independent legal professionals and accountants who, being sole practitioners or sole proprietors, rely on third parties for the purposes of these rules, shall follow the guidelines issued from time to time by the Financial Intelligence Unit subject to the Act and any regulation or rule made thereunder, taking into account the level of risk posed by the relevant sector and the practical difficulties that may arise, in ensuring compliance with the provisions of this paragraph;

- (b) have regard to information available on the level of country risk, when determining the country of a third party to be relied on.

PART III**Record Keeping**

38. (1) Every non-finance business shall maintain the relevant records including any accounts, files, business correspondence and documents relating to transactions, in particular, obtained during the CDD process, documents used to verify the identity of customers and beneficial owners, and results of any analysis undertaken, in compliance with sections 5 and 6 of the Act.

(2) The records so maintained and retained shall be up-to-date.

39. Every non-finance business shall retain the records for a period more than six years. Where any record is subject to an on-going investigation or litigation or required to be produced in a court of law or before other appropriate authority such record shall be retained until such time the non-finance business is informed by the relevant authority that such records are no longer required.

40. Every non-finance business shall maintain the relevant records in a form that is admissible as evidence in a court of law and make such record available to the supervisory authorities and law enforcement authorities in a timely manner specified by such authorities.

PART IV**Miscellaneous**

41. Every non-finance business when appointing a compliance officer may appoint a senior management level officer who shall be responsible for ensuring the non-finance business's compliance with the requirements of the Act and these rules.

42. Every non-finance business shall verify whether any customer or beneficiary appears on any designated list issued in compliance with the United Nations Act, No. 45 of 1968, with respect to any designated list on targeted financial sanctions related to terrorism and terrorist financing and proliferation of weapons of mass destruction and its financing.

43. In these rules –

“beneficiary” means a person who is entitled to the benefit of a transaction ;

“beneficial owner” means a natural person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes the person who exercises ultimate effective control over a person or a legal arrangement;

“close associate” includes –

(a) a natural person who is known to have joint beneficial ownership of legal entities and legal arrangements, or any other close business relationship; and

(b) a legal entity or legal arrangement whose beneficial owner is a natural person and is known to have been set up for the benefit of such person or his immediate family members;

“controlling ownership interest” means an interest acquired by providing more than ten *per cent* of the capital of a legal person;

“existing customer” means a customer who has commenced a business relationship on or before these rules come into force;

“Financial Action Task Force” means an independent inter -governmental body that develops and promotes the policies to protect the global financial system against money laundering, terrorist financing and financing for proliferation of weapons of mass destruction;

“immediate family member” includes the spouse , children and their spouses or partners, parents, siblings and their spouses and grandchildren and their spouses;

“legal person” means any entity other than a natural person that is able to establish a permanent customer relationship with a non- finance business or otherwise owns property and includes a company, a body corporate, a foundation, a partnership or an association;

“legal arrangement” includes an express trust, a fiduciary account or a nominee;

“money laundering” means the offence of money laundering in terms of section 3 of the Prevention of Money Laundering Act, No 5 of 2006;

“occasional customer” means any customer who engages in transactions occasionally;

“one-off customer” means any customer who engages in any one-time transaction or transactions;

“person” means a natural or legal person and includes a body of persons whether incorporated or unincorporated and a branch incorporated or established outside Sri Lanka;

“politically exposed person” means an individual who is entrusted with prominent public functions either domestically or by a foreign country, or in an international organization and includes a head of a State or a Government, a politician, a senior government officer, judicial officer or military officer, a senior executive of a State owned Corporation, Government or Autonomous body but does not include middle rank or junior rank individuals;

“risk based approach” in relation to the application of CDD measures to manage and mitigate money laundering and terrorist financing risks, means the use of simplified CDD measures in the case of customers with lower risk levels and the use of enhanced CDD measures in the case of customers with higher risk levels;

“suspicious transaction report” means a report of a suspicious transaction or attempted transaction in compliance of section 7 of the Act;

“terrorist financing” means an act constituting an offence under section 3 of the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.