



## CENTRAL BANK OF SOMALIA

Licensing and Supervision Department

*Qaybta Shati-siinta iyo Kormeerka*

### **REGULATION FOR MONEY TRANSFER BUSINESSES ON ANTI-MONEY LAUNDERING, 2015 (CBS/NBS/REG/05)**

IN EXERCISE of the powers contained in Articles 50, 52 and 108 of the Financial Institutions Law, the following Regulation are hereby made:

#### **PART I - PRELIMINARY**

- 1) These Regulation may be cited as the Regulation for Money Transfer Businesses on Anti-Money Laundering, 2015.
- 2) These Regulation shall apply to any natural or legal person, other than banks authorized to carry on banking business in Somalia under Financial Institutions Law, conducting money transfer business (whether or not the business is licensed as a money transfer business), which is expressly permitted under their license to carry on money transfer business as an activity.
- 3) These Regulation establish the Anti-Money Laundering and Countering the Financing of Terrorism compliance requirements imposed on any natural or legal person who is licensed under “The Financial Institutions (Money Transfer Business Licensing) Regulations, 2014” for conducting money transfer business.
- 4) In these Regulation, unless the context otherwise requires, the terms below shall have the following meanings: -

“*Agent*” means any person who acts under the direction of or by contract with a registered or licensed money transfer business and thereafter may subcontract other agents in a network while retaining overall responsibility for the agency relationship with subagents;

“*AML/CFT*” means Anti-Money Laundering and Countering the Financing of Terrorism;

“*Beneficial owner*” means the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes persons who exercise ultimate and effective control over a legal person, business entity or a non-profit organization;

“*Beneficiary/Recipient*” means a customer record holder who receives money transfer from another person;

“*Branch*” means any premises, other than its head office, at which a money transfer business transacts business in Somalia;

“*Business entity*” means any firm, whether or not a legal person, which is not an individual and includes a corporate body or other unincorporated association;

“*Business Relationship*” means a business, professional or commercial relationship between a money transfer business and a customer, which is expected by the money transfer business, at the time when contact is established, to have an element of duration;

“*Central bank*” means the Central Bank of Somalia;

“*Central Bank of Somalia Act*” means the Central Bank of Somalia Act, No. 130 of 2012;

“*Competent authority*” means a public authority other than a self-regulatory body with designated responsibilities for combating money laundering and/or financing of terrorism;

“*Control*” in relation to a money transfer business means a situation where:

- a. One or more persons acting in concert, directly or indirectly, own, control or have the powers to vote five percent or more of any class of voting shares of the business;
- b. One or more persons acting in concert, control in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions, of the business; or
- c. Any circumstances exist which indicate that one or more persons acting in concert, directly or indirectly, exercise a controlling influence over the management, policies or affairs of the business;

“*Customer*” means a person (including both sender and recipient of money transfers) with whom the money transfer business establishes a business relationship;

“*Customer Record*”, in relation to money transfer business, means a record of the customer identity information as held by a money transfer business;

“*Director*” includes any person occupying the position of director of a money transfer business by whatever name called and includes a person in accordance with whose directions or instructions the officers of a money transfer business are accustomed to act and includes an alternate or substitute director;

“*Enhanced due diligence*” means customer due diligence that should be conducted by a money transfer business where the money laundering/financing of terrorism risks are assessed as higher risk;

“*Financial Institution*” means any natural or legal person who conducts as a business activities defined in the Financial Institutions Law, 2012 or one or more of the following activities or operations for or on behalf of a customer:

- 1) Acceptance of deposits and other repayable funds from the public, including private banking;
- 2) Lending, including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting);
- 3) Financial leasing, not extended to financial leasing arrangements in relation to consumer products;
- 4) The transfer of money or its equivalent, including financial activity in both the formal or informal sector;
- 5) Issuing and managing means of payment (e.g. credit and debit cards, checks, traveler's checks, money orders and bankers' drafts, electronic money transfers);
- 6) Financial guarantees and commitments;
- 7) Trading in money market instruments (checks, bills, certificates of deposit, derivatives etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures;
- 8) Individual and collective portfolio management;
- 9) Safekeeping and administration of cash on behalf of other persons;
- 10) Otherwise investing, administering or managing funds or money on behalf of other persons;
- 11) Money and currency changing;
- 12) Electronic money also known as e-money services.

*“Financial Institutions Law”* means the Central Bank of Somalia Financial Institutions Law No. 130 of 22 April, 2012;

*“Financing of terrorism”* means the act of, directly or indirectly, providing or collecting funds, or attempting to do so, with the intention that they should be used or in the knowledge that they are to be used or in whole or in part for any purpose:

- a. in order to carry out a terrorist act; or
- b. by a terrorist; or
- c. by a terrorist organization.

*“Money laundering”* means the conversion or transfer of any property including money, knowing it is derived from a criminal offence, for the purpose of concealing or disguising its illegal origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of its actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property knowing that it is derived from a criminal offence; or the acquisition, possession or use of property knowing at the time of its receipt that it is derived from a criminal offence;

*“Money transfer business”* means the acceptance of cash, checks, and other payment instruments, mobile money (also including other stored-value products), in one location, and payment of a corresponding sum in cash or other form to a beneficiary in another location. Transactions performed by such services can involve one or more intermediaries, participation into a system, and a final payment to a third party, and may include any new payment methods;

“*Non face-to-face customer*” means a customer with whom the money transfer business has not had direct interaction at the time of opening a customer record;

“*Non-profit organization*” means any organization, whether or not a legal person or arrangement, that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes or any other similar activity;

“*Occasional transaction*” means a money transfer transaction carried out other than as part of a business relationship;

“*Officer*”, in relation to a money transfer business, means a director or any other person, by whatever name or title he may be called or described, who carries out or is empowered to carry out functions relating to the overall direction, in Somalia, of that money transfer business or takes part in the general management thereof in Somalia;

“*Person*” means any natural or legal person, business entity or non-profit organization;

“*Politically exposed person*” or “*PEP*” means any person who is or has been entrusted with a prominent public function in the Federal Republic of Somalia or in other countries, for example, heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned entities, important political party officials and senior staff of nongovernmental organizations. All family members of such persons, and close associates who have business or financial relationships with such persons are also included herein;

“*Reasonable measures*” means appropriate measures which are commensurate with the money laundering or financing of terrorism risks;

“*Sanctioned person*” means a person prohibited from doing business with financial institutions;

“*Sender/originator*” means a customer who requests a money transfer business to send a remittance transfer to another person;

“*Stored-value product*” means a card or other tangible object for which a person pays in advance a sum of money to the issuer in exchange for an undertaking by the issuer that on production of the card or other tangible object to the issuer or a third party (whether or not some other action is required), the issuer or the third party, as the case may be, will supply goods or services or both goods and services;

“*Structuring*” means to conduct or to attempt to conduct one or more transactions in any amount at one or more financial institutions on one or more days in any manner for purposes of evading the reporting requirements set in these Regulation;

“*Sub-agent*” means a person who acts under the direction of an agent to provide money transfer services to customers.



## **PART II - CUSTOMER DUE DILIGENCE**

### **Article 1 – Customer Due Diligence Objectives**

- 1) Customer due diligence measures shall be undertaken by money transfer businesses to achieve the following objectives:
  - a. Identify the customer and verify that customer’s identity using reliable, independent source documents, data or information;
  - b. Identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner such that the money transfer business is satisfied that it knows who the beneficial owners are and it understands the ownership and control structure of the customers in case of legal persons, business entities or non-profit organizations;
  - c. Verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person;
  - d. Understand and as appropriate obtain information on the purpose and nature of the business relationship.
  
- 2) Money transfer businesses shall identify and verify the identity of their customers when:
  - a. establishing business relationships;
  - b. carrying out occasional transactions;
  - c. sending or receiving cash of any amount, or any transaction of any amount where money laundering or financing of terrorism is suspected;
  - d. in receipt of electronic transfer that does not contain complete originator information; and
  - e. money transfer business has doubts about the veracity or adequacy of previously obtained customer identification data.

### **Article 2 – Specific Customer Due Diligence Measures**

- 1) Each money transfer business shall comply with the requirements and obligations in the “Money Transfer Business Customer Registration Regulations, 2015” in conducting specific customer due diligence on its customers.

### **Article 3 – Customer Records**

- 1) A money transfer business shall establish and maintain a customer record for all customers when establishing a business relationship or before carrying out an occasional transaction.
- 2) A money transfer business shall keep customer records accurate and current.
- 3) Money transfer businesses shall not keep anonymous customer records or customer records in obviously fictitious names. Any such customer records in existence prior to the issuance of these Regulation shall be closed within three months of these Regulation’ adoption unless all identification requirements in these Regulation and other relevant regulations are fulfilled.

### **Article 4 – Prohibited Relationship**

- 1) Money transfer businesses are prohibited from having a business relationship with sanctioned persons.

#### **Article 5 – Enhanced Due Diligence**

- 1) Money transfer businesses shall apply and document enhanced due diligence procedures to:
  - a. complex or unusually large transactions and unusual patterns of transactions that have no apparent economic or lawful purpose or are suspicious in nature;
  - b. business relationships inconsistent with the expected type of activity and business model;
  - c. business relationships or transactions with persons linked to regions and jurisdictions where there are high risk of money laundering and financing of terrorism and/or that do not or insufficiently apply anti-money laundering and countering the financing of terrorism measures;
  - d. Non face-to-face business relationships;
  - e. Business relationships or transactions with PEPs and other higher risk customers.
- 2) Enhanced due diligence procedures shall minimally include:
  - a. Written approval of a manager to open or continue the customer record;
  - b. Frequent monitoring of transactions based on the customer’s account profile;
  - c. Reasonable measures to establish the source of wealth and source of funds;
  - d. Taking and documenting additional and appropriate measures that facts and circumstances warrant; and
  - e. Any additional requirement pursuant to a regulation issued by Central Bank of Somalia.

#### **Article 6 – On-going Monitoring**

- 1) Money transfer businesses shall conduct ongoing monitoring on the business relationship with customers.
- 2) Money transfer businesses shall, during the course of a business relationship with a customer, observe the conduct of the customer’s record and scrutinize transactions undertaken throughout the course of the business relationship, to ensure that the transactions are consistent with the money transfer business’s knowledge of the customer, its business and risk profile, including the source of funds and intended purpose, where necessary.
- 3) For the purposes of ongoing monitoring, a money transfer business shall put in place and implement adequate systems and processes, commensurate with its size and complexity, to:
  - a. monitor its business relationships with customers; and
  - b. detect and report suspicious, complex, unusually large or unusual patterns of transactions undertaken throughout the course of business relationships.
- 4) Money transfer businesses shall ensure that the customer due diligence data, documents and information obtained in respect of customers, natural persons appointed to act on behalf of the customers and beneficial owners of the customers, are relevant and kept up-to-date by undertaking

reviews of existing customer due diligence data, documents and information, particularly for higher risk categories of customers.

- 5) The frequency of the on-going monitoring shall commensurate with the level of money laundering and financing of terrorism risks posed by the customer based on the risk profiles and nature of transactions.
- 6) The findings and related documents shall be made available to competent authorities upon request and in a timely manner.

### **PART III - ANTI-MONEY LAUNDERING PROGRAM**

#### **Article 7 – Elements of Anti-Money Laundering Program**

- 1) Money transfer businesses shall develop a program for the detection, management, and mitigation of money laundering and financing of terrorism risks. This program shall include the following:
  - a. written internal policies, procedures and controls, signed and dated by senior management, that are based on the internal anti-money laundering and countering of financing of terrorism risk assessment and relevant laws, regulations and Regulation;
  - b. designation of an anti-money laundering compliance officer responsible for enforcing the policies, procedures and controls. The compliance officer shall have ready access to all books, records and employees of the money transfer business necessary to fulfill his/her responsibilities. The compliance officer shall be at senior management level and have the necessary knowledge, expertise and authority to effectively discharge his/her roles and responsibilities;
  - c. creation of adequate screening procedures to ensure high standards when hiring employees;
  - d. regular training for directors and officers, which shall be documented; and
  - e. internal audit arrangements to check compliance with and effectiveness of the measures taken to apply these Regulation. Persons responsible for internal audit shall also be responsible for assessing the overall adequacy of the anti-money laundering program in terms of risks identified in internal risk assessments as well as evaluating compliance with the program.

#### **Article 8 – Policies**

- 1) Policies on anti-money laundering and countering the financing of terrorism compliance shall include at a minimum, the following areas:
  - a. Conduct of customer due diligence for business transactions with any customer,
  - b. Maintenance of records,
  - c. On-going monitoring of customers and business transactions,
  - d. Suspicious transaction reporting and cash transaction reporting,
  - e. Staff training on anti-money laundering and countering the financing of terrorism measures,
  - f. Appointment of a competent compliance officer to be responsible for all anti-money laundering and countering the financing of terrorism compliance matters, and
  - g. Risk management procedures.

## **PART V - REPORTING OBLIGATIONS**

### **Article 9 – Reporting Obligations**

- 1) A money transfer business shall expediently report to the Central Bank of Somalia all details related to any transaction of any amount if it suspects or has a reasonable ground to suspect that the transaction, series of transactions, structured transactions, transactions that appear to be structured or attempted transaction(s) may be related to:
  - a. money laundering or derived or used for in the commission of an offense or may be proceeds of a crime; or
  - b. funds that are linked or related to, or are used or to be used for in support of terrorism, terrorist acts, or by terrorist organizations.
- 2) A money transfer business shall expediently report to the Central Bank of Somalia any transactions or series of transactions taking place within a week that appear to be linked which exceed the designated threshold of USD 5,000 or the equivalent in any currency.
- 3) The reports required from money transfer businesses under these Regulation shall be sent to the Central Bank of Somalia in such a form and in accordance with procedures as prescribed in these Regulation.
- 4) Money transfer businesses shall keep records related to suspicious transaction reports, together with all internal findings and analysis done in relation to them.
- 5) Money transfer businesses, their directors, officers and employees shall be prohibited from disclosing the fact that a suspicious transaction report or related information is being reported to the Central Bank of Somalia.

### **Article 10 – Liability**

- 1) Where a money transfer business outsources or uses an agent, the money transfer business shall take reasonable measures to ensure that the agent or the person to which activities are outsourced complies with the requirements of these Regulation and other relevant laws and regulations.
- 2) A money transfer business shall remain fully liable for any act of its employee, agent or person to which activities are outsourced.

## **PART VIII - MISCELLANOUS**

### **Article 11 – Transitional Provision**

- 1) Any person who at the commencement of these Regulation is licensed under “The Financial Institutions (Money Transfer Business Licensing) Regulations, 2014” shall comply with these Regulation within 6 months of the issuance of these Regulation.