

Government of Pakistan

Securities and Exchange Commission of Pakistan

NOTIFICATION

Islamabad, the 27th July, 2022

S.R.O. 1184(I)/2022 - In exercise of the powers conferred by sub-section (2)(c) and (2)(d) of section 6A of the Anti Money Laundering Act, 2010 (VII of 2010), the Securities and Exchange Commission of Pakistan is pleased to make the following regulations:-

CHAPTER I

PRELIMINARY

1. Short Title and Commencement- (1) These regulations shall be called the Securities and Exchange Commission of Pakistan Anti Money Laundering and Countering Financing of Terrorism Regulations for formation agents, 2022.

(2) They shall come into force at once.

(3) These regulations shall apply to a formation agent referred to in sub-clause (d)(I) of clause (xii) in section 2 of AML Act; except professionals regulated by Institute of Chartered Accountants of Pakistan (ICAP), Institute of Cost and Management Accountants of Pakistan (ICMAP) and Federal Board of Revenue (FBR).

2. Definitions- (1) In these regulations, unless there is anything repugnant in the subject or context,

- (a) "AML Act" means Anti Money Laundering Act, 2010 (VII of 2010);
- (b) "Act" means Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (c) "formation agent" for the purposes of these regulations means authorized intermediary registered under Intermediaries (Registration) Regulations, 2017, carrying out those activities as referred to sub Regulation (3) of Regulation (1) of these Regulations or any other person notified by the Commission .
- (d) "close associate" of a PEP means, -
 - (i) an individual known to have joint beneficial ownership of a legal person or a legal arrangement or any other close business relations with the PEP;
 - (ii) an individual who has sole beneficial ownership of a legal person or a legal arrangement which is known to have been set up for the benefit of the PEP;
 - (iii) an individual who is reasonably found or believed to be closely connected with the PEP for any other reason, either socially or professionally.
- (e) "Commission" means Securities and Exchange Commission of Pakistan established under section 3 of the Act;
- (f) "enhanced due diligence" or "EDD" means taking additional customer due diligence (CDD) measures and may include the information set out in sub-regulation (2) of regulation 8;
- (g) "family member" of a politically exposed person includes-
 - (i) a spouse of the PEP;
 - (ii) lineal ascendants and descendants and siblings of the PEP;
- (h) "Politically exposed person" or "PEP" means an individual who is or has been entrusted with a prominent public function either domestically or by a foreign country, or in an international organization and includes but not limited to,-

- (i) foreign PEPs, heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations and political party officials;
- (ii) domestic PEPs, heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, political party officials;
- (iii) international organization PEPs, members of senior management or individuals who have been entrusted with equivalent functions:
Provided that middle ranking or more junior individuals in the above referred categories are not included in the definition of PEPs;

- (i) “reasonable measures” means appropriate measures which are commensurate with the money laundering or terrorism financing risks;
- (j) “senior management” means an officer or employee of the formation agent with sufficient knowledge of the formation agent’s risk exposure, and of sufficient authority, to take decisions affecting its risk management and mitigation, including chief executive officer/ managing director, deputy managing director, chief operating officer, company secretary, chief financial officer, chief compliance officer and chief regulatory officer and any holder of such positions by whatever name called;
- (k) “simplified due diligence” or “SDD” means taking reduced CDD measures and may include the measures set out in sub-regulation (2) of regulation 10;
- (l) “suspicious transaction report” or STR means the report on suspicious transaction specified under Section 7 of the AML Act;

(2) The words and expressions used in these regulations but not defined shall have the same meaning as assigned to them under the AML Act, the Act and laws administered thereunder.

CHAPTER II

RISK ASSESSMENT AND MITIGATION

3. Risk Assessment – (1) The formation agent shall take appropriate steps in accordance with section 7F of the AML Act to identify, assess and understand its money laundering, and terrorism financing (ML/TF) risks for customers, countries or geographic areas and products, services, transactions or delivery channels.

- (2) The formation agent shall,-
 - (a) document their risk assessments;
 - (b) consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied;
 - (c) keep their risk assessments up to date;
 - (d) categorize its own overall entity level risk based on the result of risk assessment; and
 - (e) have appropriate mechanisms to provide risk assessment information to the Commission.

4. Risk Mitigation and Applying Risk Based Approach. - (1) The formation agent shall,-

- (a) have policies, controls and procedures, which are approved by its senior management, to manage and mitigate the risks that have been identified in its own risk assessment and any other risk assessment publicly available or provided by the Commission;
- (b) monitor the implementation of those policies, controls and procedures and to enhance them if necessary; and

- (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.

Explanation: - For the purposes of this regulation the expression “risk-based approach” means applying measures to manage and mitigate money laundering and terrorism financing risks that are commensurate with the risks identified.

- (2) The formation agent may take simplified measures to manage and mitigate risks, if lower risks have been identified. Simplified measures should not be permitted, whenever there is a suspicion of ML/TF.

CHAPTER III

CUSTOMER DUE DILIGENCE (CDD) AND BENEFICIAL OWNERSHIP

5. Customer Due Diligence (CDD)- (1) The formation agent shall conduct CDD in the circumstances and matters set out in section 7A (1) of the AML Act when engaging in the activities applicable under Sub Regulation (3) of Regulation 1 of these Regulations.

- (2) For the purposes of conducting CDD as required under section 7A (2) of the AML Act every formation agent shall comply with regulation 5 to 13 of these Regulations.

- (3) The formation agent shall categorize each customer’s risk depending upon the outcome of the CDD process.

- (4) The formation agent shall, -

- (a) identify the customer;
- (b) verify the identity of that customer before or during the course of establishing a business relationship, using reliable and independent documents, data or information;
- (c) where the customer is represented by an authorized agent or representative, the formation agent shall, -
 - (i) identify every person who deals with them on behalf of the customer;
 - (ii) verify the identity of that person using reliable and independent documents data or information as set out in Annexure-1 ; and
- (d) before establishing a business relationship, identify the beneficial owner and take reasonable measures to verify the identity, by using reliable and independent document, data or sources of information as set out in Annexure-1.
- (e) For customers that are legal persons, identify and take reasonable measures to verify the identity of beneficial owners by,-
 - (i) identifying the natural person(s) (if any) who ultimately has a controlling ownership interest (as defined under relevant laws) in a legal person;
 - (ii) to the extent that there is doubt under (i) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; and
 - (iii) where no natural person is identified under (i) or (ii) above, the identity of the relevant natural person who holds the position of senior management.
- (f) for customers that are legal persons or legal arrangements, identify the customer and verify its identity by obtaining the following minimum information in addition to the information required in Annexure -1.
 - (i) name, legal form and proof of existence;

- (ii) the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement;
- (iii) the address of the registered office and, if different, a principal place of business; and;
- (iv) understand the nature of the customer's business and its ownership and control structure;
- (g) for customers that are legal arrangements, identify and take reasonable measures to verify the identity of beneficial owners as follows, -
 - (i) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);
 - (ii) where any of the persons specified in (i) is a legal person or arrangement, the identity of the beneficial owner of that legal person or arrangement shall be identified;

(5) (1) The formation agent may complete verification of identity of a customer or beneficial owner after the establishment of the business relationship, provided that-

- (i) this occurs as soon as reasonably practicable;
- (ii) this is essential not to interrupt the normal conduct of business; and
- (iii) the risks are effectively managed;

(2) The types of circumstances where the formation agent permits completion of verification after the establishment of the business relationship should be recorded in the CDD policies and risk management procedures should also be adopted under such circumstances.

(6) When formation agent is unable to comply with relevant CDD measures:

- (a) it should not commence business relations, or should terminate the business relationship; and
- (b) it should consider making a suspicious transaction report (STR) in relation to the customer.

6. Ongoing Monitoring – The formation agent shall conduct risk-based ongoing due diligence on the business relationship, including scrutinizing transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the formation agent's knowledge of the customer, their business and risk profile, including where necessary, the source of funds and undertaking reviews of existing records; and ensuring that documents, data or information collected for CDD purposes, is kept up-to-date and relevant, particularly for higher risk categories of customers.

7. Existing Customers –The formation agent is required to apply CDD requirement to its existing customers on the basis of materiality and risk and should conduct due diligence on existing relations at appropriate times, considering when CDD measures have previously been undertaken and the adequacy of data obtained.

8. Enhanced Due Diligence (EDD) – (1) The formation agent shall implement appropriate internal risk management systems, policies, procedures and controls to determine if any customer or beneficial owner presents high risk of ML/TF. The formation agent shall apply EDD where a customer presents high risk of ML/TF including but not limited to the following circumstances-

- (a) business relationships and transactions with natural and legal persons when the ML/TF risks

- are higher;
- (b) business relationships and transactions with natural and legal persons from countries for which this is called for by FATF and published by FMU on its website;
 - (c) PEPs and their close associates and family members. To determine whether a customer or the beneficial owner is a PEP, formation agent shall put in place appropriate risk management systems
- (2) EDD measures include but shall not be limited to the following measures, -
- (a) Obtaining additional information on the customer (e.g. volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner;
 - (b) Obtaining additional information on the intended nature of the business relationship;
 - (c) Obtaining information on the source of funds and source of wealth of the customer and beneficial owner;
 - (d) Obtaining information on the reasons for intended or performed transactions;
 - (e) Obtaining the approval of senior management to commence or continue the business relationship;
 - (f) Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

9. Counter Measures against high risk countries. – The formation agent shall apply the countermeasures including but not limited to enhanced due diligence proportionate to the risk as indicated by the Federal Government, pursuant to recommendations by the National Executive Committee and when called upon to do so by FATF.

10. Simplified Due Diligence (SDD) – (1) The formation agent may apply SDD only where low risk is identified through adequate analysis of its own risk assessment and any other risk assessment publicly available or provided by the Commission in accordance with regulation 10(2) of these regulations and commensurate with the lower risk factors. The decision to rate a customer as low risk shall be justified in writing by the formation agent.

- (2) SDD measures may include the following measures, -
- (a) verifying the identity of the customer and the beneficial owner after the establishment of the business relationship;
 - (b) reducing the degree of on-going monitoring and scrutinizing transactions, based on a reasonable monetary threshold as prescribed or as set out by the Commission;
 - (c) not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established.
- (3) The formation agent shall not apply any SDD whenever there is a suspicion of money laundering or terrorism financing.

11. Reliance on Third Parties - (1) As provided under section 7B of the AML Act, any formation agent may rely on a Third Party to conduct CDD requirements as set out in these regulations on its behalf, provided that the formation agent shall-

- (a) remain liable for any failure to apply such indicated CDD measures;

- (b) immediately obtain from the Third Party the required information concerning CDD;
 - (c) 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; and
 - (d) satisfy itself that the Third Party is supervised by an AML/CFT regulatory authority or an equivalent foreign authority and has measures in place for compliance with AML obligation of CDD and record keeping.
- (2) Where a formation agent relies on a Third Party that is part of the same corporate group, the formation agent may deem the requirements of sub regulation 11(1) to be met if, -
- (a) the corporate group applies CDD and record-keeping requirements in accordance with the AML Act and its associated regulations;
 - (b) the implementation of the requirements in clause (a) is supervised by an AML/CFT regulatory authority or an equivalent foreign authority; and
 - (c) the corporate group has adequate measures in place to mitigate any higher country risks.
- (3) In addition to sub-regulation 11(1), when determining in which country a Third Party may be based, the formation agent shall have regard to available information on the level of country risk.
- (4) Notwithstanding any reliance upon a Third Party, the formation agent shall ultimately remain responsible for its AML/CFT obligations, including generating STRs and shall carry out ongoing monitoring of such customer itself.

12. TFS Obligations: (1) Pursuant to section 7H of the AML Act, in order to comply with TFS obligations, the formation agent shall:

- (a) develop mechanisms, processes and procedures for screening and monitoring of existing customers, potential customers, beneficial owners and associates to detect any matches or potential matches with the stated designated/proscribed persons in the SROs and notifications issued by Ministry of Foreign Affairs, NACTA (through concerned Provincial Home Departments) and Ministry of Interior;
- (b) where during the process of screening or monitoring of existing customers or potential customers the formation agent finds a positive or potential match, it shall immediately:
 - (i) freeze, where applicable the relevant customer's fund, without prior notice, if it is an existing customer in accordance with the respective SRO or notification;
 - (ii) prohibit, where applicable from providing any services in accordance with the respective SRO or notification;
 - (iii) reject the customer, if the relationship has not commenced;
- (c) in all cases referred to in clause (b), the formation agent shall file a suspicious transaction report to the FMU in case that person is designated under United Nations Security Council Resolutions, or proscribed under the Anti-Terrorism Act, 1997, and simultaneously notify the Commission in the manner as may be instructed from time to time by the Commission;
- (d) implement any other obligation under the AML Act, United Nations (Security Council) Act 1948 and Anti-Terrorism Act 1997, and any regulations made thereunder.

(2) The formation agent is prohibited, on an ongoing basis, from providing any financial services to proscribed/ designated entities and persons or to those who are known for their association with such entities and persons, whether under the proscribed/ designated name or with a different name.

(3) The formation agent should monitor their business relationships with the entities and individuals on a continuous basis and ensure that no such relationship exists directly or indirectly, through ultimate control of an entity or account, as the case may be, and where any such relationship is found, the formation agent shall take immediate action as per law, including reporting to the FMU.

Explanation: - For the purposes of this regulations the expressions “associates” means persons and entities acting on behalf of, or at the direction, or for the benefit, of proscribed/ designated entities and individuals that may be determined on the basis of appropriate screening of sanctions lists, disclosed nominee/beneficiary information, publicly known information, Government or regulatory sources or reliable media information, etc.

13. Reporting of STR/CTR.- The formation agent shall file STR/CTR to FMU, as per requirements prescribed by FMU in compliance with Section 7 of AML Act.

CHAPTER IV MISCELLANEOUS

13A Inspection.- Subject to clause (f) of sub-section (2) of section 6A of the AML Act, the Commission shall have all the powers to conduct inspection for the purposes of monitoring, supervising and to ensure compliance with the requirements of sections 7(1), 7(3) to 7(6) and 7A to 7H of AML Act and any rules or regulations made thereunder.

14. Record Keeping. - (1) The records maintained by formation agent as set out in section 7C of the AML Act shall be sufficient to permit reconstruction of individual transactions including the nature and date of the transaction, the type and amount of currency involved and the customer involved in the transactions so as to provide, when necessary, evidence for prosecution of criminal activity.

(2) Where transactions, customers or instruments are involved in litigation or where relevant records are required by a court of law or other competent authority, the formation agent shall retain such records until such time as the litigation is resolved or until the court of law or competent authority indicates that the records no longer need to be retained.

(3) The records of identification data obtained through CDD or EDD process including copies of identification documents, application forms, verification documents, other documents and result of any analysis along with records of account files and business correspondence, shall be maintained for a minimum period of five years after termination of business relationship.

(4) The formation agent will maintain a list of all such customers/accounts where the business relationship was refused or needed to be closed on account of negative verification.

(5) The formation agent shall promptly provide, upon request, from the Commission, investigating or prosecuting agency and FMU, any record within 48 hours after the request has been made or such time as may be instructed by the relevant authority.

15. Compliance Program: - In order to implement compliance programs as set out in section 7G of the AML Act, the formation agent shall implement the following internal policies, procedures and controls:

- (a) compliance management arrangements including the appointment of a compliance officer at the management level;

- (b) screening procedures when hiring employees to ensure the integrity and conduct, skills, and expertise of such employees to carry out their functions effectively;
- (c) an ongoing employee training program; and
- (d) an independent audit function to test the system.

16. Foreign Branches and Subsidiaries. - The formation agent shall ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with Pakistan requirements where the minimum AML /CFT requirements are less strict than Pakistan, to the extent of the host country laws. If the foreign country does not permit the proper implementation of AML/CFT measures consistent with that of Pakistan requirements, they should apply appropriate additional measures to manage the risks, and inform the Commission.

17. Penalty. - Any violation of any provision of these regulations will be subject to sanctions in accordance with the AML/CFT Sanctions Rules, 2020 and shall be imposed by the Commission in accordance with clause (h) of sub-section (2) of Section 6A of AML Act.

Minimum Documents Required for Customer Due Diligence

- (i) for natural person, copy of (Where applicable), -
 - (I) Computerized National Identity Card (CNIC) issued by NADRA;
 - (II) National Identity Card for Overseas Pakistanis (NICOP) and/or Passport issued by NADRA for Non-resident / overseas Pakistanis or those who have dual nationality;
 - (III) Pakistan Origin Card (POC) issued by NADRA and/or Passport for Pakistanis who have given up Pakistan nationality;
 - (IV) Form B or Juvenile card issued by NADRA to children under the age of 18 years; or
 - (V) where the natural person is a foreign national, either an Alien registration card (ARC) issued by NADRA or a Passport having valid visa on it or any other proof of legal stay along with passport;

- (ii) for legal person, certified copies of, -
 - (I) resolution of board of directors for establishing of business relationship;
 - (II) memorandum of association;
 - (III) articles of association, wherever applicable;
 - (IV) certificate of incorporation;
 - (V) list of directors required to be filed under the Companies Act, 2017 (XIX of 2017), as applicable;
 - (VI) identity documents as per sub-clause (I) of all the directors, beneficial owners and persons authorized to operate the business relationship;
 - (VII) any other documents as deemed necessary including its annual accounts and financial statements or disclosures in any form which may help to ascertain the detail of its activities, sources and usage of funds in order to assess the risk profile of the prospective customer;

- (iii) for a legal arrangement, certified copies of, -
 - (I) the instrument creating the legal arrangement;
 - (II) registration documents and certificates;
 - (III) the legal arrangement's by-laws, rules and regulations;
 - (IV) documentation authorizing any persons to open and operate the business relationship;
 - (V) identity document as per sub clause (I) above of the authorized persons, beneficial owners and of the members of governing body, board of trustees or executive committee, if it is the ultimate governing body, of the legal arrangement; and
 - (VI) any other documents as deemed necessary including its annual accounts and financial statements or disclosures in any form which may help to ascertain the subject of the trust, the detail of its activities, sources and usage of funds in order to assess the risk profile of the prospective customer;

- (iv) in respect of government institutions and entities not covered herein above. -
 - (I) CNICs of the authorized persons; and
 - (II) letter of authorization from the concerned authority;

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