

14 Ramadan, 1434

23 July, 2013

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### **Circular for Finance Companies**

Dear Mr. Chairman of the Board,

In line with the issuance of the Anti-Money Laundering and Combating Financing of Terrorism Law No. 106 of 2013 and its Executive Regulation, the Board of Directors of the Kuwait Central Bank has adopted in its meeting held on 23/7/2013 the annexed Instruction No. (2/FS/309/2013) on combating money laundering and terrorism financing which will become effective as of 18/8/2013.

We would like to note the importance of paying adequate and sufficient attention to the requirements of the attached Instruction, in particular the following focus areas:

- Calling on the adoption of adequate policies and procedures required to prevent money laundering and financing of terrorism by your company's board of directors, in line with the provisions of the AML/CFT Law, its Executive Regulation, ministerial resolutions and relevant Instruction.
- Conducting necessary risk assessment of money laundering and terrorism financing and indentifying customer risk factors and risk factors related to specific transactions, which require enhanced CDD measures.
- Providing ongoing training to members of the Board, executive and supervisory management, directors and all bank staff to ensure full understanding and knowledge of the requirements set forth in the anti-money laundering and combating financing terrorism Law, its Executive Regulation, ministerial resolutions and relevant Instruction. Such training programs should be provided by competent professional parties.

Sincerely yours,

Dr. Mohammed Youssef Al-Hashel

**INSTRUCTION No. (2/FS/309/2013) FOR FINANCE COMPANIES  
ON COMBATING MONEY LAUNDERING AND TERRORISM FINANCING**

**Introduction**

In light of the latest changes and developments affecting the regional and international economic situation and given the substantial development of communication technologies leading to high-speed transfer of funds and to a new trend in capital flows around the world, financial crimes, and especially money laundering and terrorism financing, have become an eminent risk affecting all countries. Nations are seeking to adopt and implement policies and procedures aiming at combating those crimes using all possible means, taking into account the detrimental effect of such crimes on their economic situation.

The international community has appealed to individual countries to actively combat money laundering and terrorism financing given their damaging effect not only at the economic level but also at both the social and political levels. In an effort to urge countries to show further determination and reinforce their basic foundations to combat such crimes, the FATF has recently made amendments to its issued international standards to combat money laundering and terrorism financing in order to limit the effects of related crimes and to reiterate its commitment to all UN-issued conventions on combating terrorism financing, corruption and their effects on institutions, persons and organizations around the world.

The State of Kuwait has always sought to adopt policies and procedures ensuring serious and ongoing combating of crimes related to money laundering, terrorism financing and corruption. It has therefore issued laws, ministerial resolutions and instructions to that effect, such as the Anti-Money Laundering and Combating Financing of Terrorism Law No. 106 of 2013 and its Executive Regulation.

The Central Bank of Kuwait strongly believes in its role to protect the banking and financial system from the risks of such crimes and deploys all necessary efforts in that regard. As part of measures taken to face this threat and its negative and dangerous effects on the reputation of the banking system, and since financial institutions are recurrent victims of money launderers and terrorism financing parties, relevant instructions have been updated and amended in a comprehensive and integrated way, in line with the provisions of the Anti-Money Laundering and Combating Financing of Terrorism Law No. 106 of 2013, its Executive Regulation and relevant ministerial resolutions. These instructions are based on recognizing risks related to money laundering and terrorism financing operations and set forth suitable measures to be taken in order to use the right tools to combat and mitigate the negative effect of such operations.

Therefore, all finance companies shall abide by the following:

The definitions set out in Article 1 of the Anti-Money Laundering and Combating Terrorism Financing Law, as well as those set out in the Executive Regulation of the Law shall apply to this Instruction.

## **I. Policies and Procedures**

1. Finance companies shall set internal policies, procedures, systems and controls to combat money laundering and terrorism financing. These should include at a minimum the following measures and procedures:
  - a) Risk evaluation of customers and transactions.
  - b) To identify and verify the identity of the customer, beneficial owner and politically exposed person.
  - c) To maintain records and information of customers and transactions.
  - d) To apply customer due diligence measures to customers and the beneficial owner.
  - e) To report suspicious transactions to the Kuwait Financial Intelligence Unit.
  - f) To ensure that internal policies, procedures, systems and controls are subject to independent review.
  - g) To designate a compliance officer at senior management level to ensure compliance of the company with the provisions of the Anti-Money Laundering and Combating Terrorism Law No. 106 of 2013, its Executive Regulation and this Instruction.
  - h) To apply adequate fit and proper requirements when hiring employees, as set forth in paragraph (9) of Section XV of the present Instruction.
  - i) To provide an on-going training program to all new and existing employees, board members, executive and supervisory management members and directors.
  - j) Any other arrangements as prescribed by the CBK in this regard.
2. Internal policies, procedures, systems and controls should be consistent with the finance company's size, nature and scope of operations and should be adopted by the board of directors and be applicable to all domestic and foreign branches and subsidiaries of the finance company, if applicable. In addition, finance companies should include mechanisms to share available information with other members of the group and to protect its confidentiality.

## **II. Conducting risk assessments**

1. Finance companies shall assess their money laundering and terrorism financing risks, including of new products or technologies. The risk assessment in addition to any related information and updates shall be preserved by the company.
2. Finance companies should have in place processes to identify, monitor, manage and mitigate money laundering and terrorism financing risks giving consideration to the following factors:
  - Customer risk;

- Risks related to countries or geographic areas in which customers operate or the place of origination or destination of transactions;
  - Risks related to the nature of products and services offered; and
  - Risks related to the delivery channels for products and services.
3. Finance companies should identify possible factors of high risk situations where enhanced CDD measures should be applied, including but not limited to the following:
- a) Customer risk factors:**
- Business relationships conducted in unusual circumstances.
  - Non-resident customers.
  - Legal persons or arrangements that manage the assets of third parties.
  - Companies that have nominee shareholders or shares in bearer form.
  - Activities that are cash-intensive or susceptible to money laundering or terrorism financing.
  - Unusual or excessively complex ownership structure of a company with no visible economic or lawful purposes given the nature of the company's business.
  - Business relationships and transactions conducted other than "face to face".
  - Business relationships conducted in or with countries as identified in 3(b) below.
  - Politically exposed persons ("PEP") or customers linked to a PEP.
  - High net worth customers, or customers whose source of income or assets is unclear.
- b) Country or geographic risk factors:**
- Countries classified by credible sources, such as mutual evaluation reports or follow-up reports published by the FATF, as not having adequate AML/CFT systems.
  - Countries identified by the Kuwait Financial Intelligence Unit as high risk.
  - Countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations.
  - Countries classified by credible sources as having significant levels of corruption or other criminal activity.
  - Countries or geographic areas classified by credible sources as providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their territories.
- c) Product, service, transaction or delivery channel risk factors:**
- Anonymous transactions (which may include cash).
  - Accounts opened, business relationships or transactions conducted with customers that are not physically present for the purpose of identification..
  - Payment received from unknown or un-associated third parties
4. Finance companies shall adopt the following measures to manage the risk, when defining their risk assessment basis as per Section II (1):
- a. Assess risk factors including;

- i. The purpose of opening an account or establishing a business relationship;
  - ii. The size of deposits or transactions undertaken by a customer;
  - iii. The frequency of transactions or duration of the relationship.
- b. To obtain additional information on the customer, beneficial owner, beneficiary and transaction.
- c. To establish a risk profile on customers and transactions. The customer profile should be based upon sufficient knowledge of the customer (and beneficial owner(s) as applicable), including the customer's anticipated business with the finance company, and where necessary the source of funds and source of assets of the customer.
- d. To apply enhanced customer due diligence to high risk customers.
- e. To update more regularly the information on all customers.
- f. To adopt other measures as may be prescribed by the Central Bank of Kuwait and the Kuwait Financial Intelligence Unit.

### **III. Customer Identification Requirements**

1. Finance companies shall not maintain or open an account of unknown identity or in fictitious names.
2. Finance companies must identify and verify the identity of the customer and beneficial owner in the following circumstances:
  - a) Before or during the course of opening an account or establishing a business relationship with a customer;
  - b) Before carrying out a transaction above KD3000 or its equivalent in foreign currency, whether conducted as a single transaction or several transactions that appear to be linked;
  - c) Whenever there is a suspicion of money laundering or terrorism financing;
  - d) Whenever doubts exist about the veracity or adequacy of previously obtained customer identification data.
3. Finance companies shall obtain valid copies of identification documents, according to the requirements of paragraph (2) above, as detailed below:
  - a) Civil card for citizens and residents;
  - b) Passport or travel document for persons not residing in the State of Kuwait;
  - c) Commercial license issued by the Ministry of Commerce and Industry for companies and establishments registered in Kuwait, in addition to the adopted signature template. In the case of non-resident companies and establishments, documents issued by competent authorities in the state in which they were incorporated or established and documented by competent authorities in Kuwait should be required;
  - d) Documents, papers, instruments, and court orders proving that a person has been appointed to represent the concerned person.

- e) For customers not mentioned above, companies shall have to obtain approved official identification documents attested by competent official authorities or bodies that issue these documents.
- 4. The Central Bank of Kuwait may prescribe additional identification and verification requirements for customers to be applied by finance companies.

#### **IV. Politically Exposed Persons**

- 1. Finance companies shall establish appropriate risk-management systems to determine whether as customer or beneficial owner is a politically exposed person (PEP). Procedures for determining who a PEP is should include:
  - a) seeking relevant information from the customer;
  - b) referring to available information about the customer; and
  - c) referring to commercial electronic databases of PEPs, if available.
- 2. If the finance company determines that the customer or beneficial owner is a PEP, it should apply the following additional customer due diligence measures:
  - a) For foreign politically exposed persons:
    - (i) obtain approval from senior management before establishing or continuing a business relationship with such a person;
    - (ii) take all reasonable measures to identify the source of wealth and funds; and
    - (iii) apply enhanced ongoing monitoring to the business relationship.
  - b) For a domestic PEP or any person who is or has been entrusted with a prominent function by an international organization, the measures referred to under (a) above shall be applied whenever the finance company determines the risk of money laundering or terrorism financing to be higher.

#### **V. Enhanced CDD for Higher Risk Customers**

- 1. Finance companies should examine, as far as possible, the background and purpose of all complex, unusual and large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose.
- 2. Finance companies should conduct enhanced CDD measures, consistent with the risks identified as regards politically exposed persons and non face-to-face customers. In particular, they should increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.
- 3. Examples of enhanced CDD measures that could be applied for higher-risk business relationships include but are not limited to the following:

- a) Obtaining additional information on the customer (e.g. occupation, volume of assets and transactions), and updating regularly the identification data of customer and beneficial owner.
  - b) Obtaining additional information on the intended nature of the business relationship.
  - c) Obtaining necessary information on the source of funds or source of assets of the customer.
  - 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 customer transactions, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.
4. Enhanced CDD measures should be applied at each stage of the CDD process and on an on-going basis.
  5. Enhanced CDD measures for business relationships with customers not physically present for the purpose of identification should include:
    - a) certification of documents in line with relevant Laws and procedures;
    - b) requisition of additional documents to verify the identity of the customer, or directly contacting the customer.

## **VI. Determination of Beneficial Owner**

1. Finance companies must take all necessary measures to determine if a customer is acting on behalf of one or more beneficial owners, by obtaining a signed affidavit from the customer before conducting the transaction stating that the customer is not acting or conducting the transaction on behalf of another person or through any other source deemed necessary by the finance company.
2. If a finance company determines that the customer is acting on behalf of one or more beneficial owners, it should verify the identity of the beneficial owner(s) by using relevant information or data obtained from a reliable source such that the finance company is satisfied that it knows the identity of the beneficial owner(s). Finance companies should apply CDD measures to the beneficial owner(s) in this case.
3. If the customer is a company listed on a stock exchange, a finance company is not required to identify and verify the identity of any shareholder or beneficial owner of the company provided that the company is subject to adequate disclosure requirements to ensure transparency of beneficial ownership. In this case, finance companies should only obtain copies of documents required to identify the company as set forth in Section III above.
4. For customers that are other legal entities or arrangements, finance companies should take adequate measures to understand the ownership and control structure of the customer, including the ultimate natural person who owns or controls it as described below:

- a) With respect to such legal entities identification should be made of each natural person who:
  - (i) Owns or controls directly or indirectly more than 50 percent of the legal entity;
  - (ii) Is responsible for the management of the legal entity.
- b) With respect to legal arrangements, identification should be made of the settlor, trustee, beneficiary or any person in similar positions.

#### **VII. Delayed Customer Identity Verification**

1. Finance companies may engage in the business relationship with the customer prior to the completion of the customer verification process outlined in Section III of this Instruction provided all of the following conditions are met:
  - a) when the verification occurs as soon as reasonably possible and practicable.
  - b) when it is essential not to interrupt the normal conduct of business.
  - c) when the ML and TF risks are effectively managed.
2. Procedures to manage risk concerning delayed customer identification should include as a minimum a set of measures such as a limitation on the number, types or value of transactions that can be performed by the customer.

#### **VIII. Acceptance of New Customers**

1. Where a finance company is unable to verify the identity of the customer or beneficial owner(s), it shall refrain from opening the account or commencing the business relationship or carrying out the transaction. In such cases, the finance company shall consider filing a report to the Kuwait Financial Intelligence Unit.

#### **IX. Maintenance of Customer Information**

Finance companies must gather and maintain customer information throughout the course of the business relationship. Documents, data, or information collected under the CDD process should be kept up to date and relevant by undertaking regular reviews of existing records at appropriate times as determined by the company.

#### **X. Ongoing Monitoring of Customer Transactions**

Finance companies must monitor on an ongoing basis customer transactions. Monitoring must include the scrutiny of customer transactions to ensure that they are being conducted according to the company's knowledge of the customer and the customer risk profile and, where necessary, the source of funds and wealth. Monitoring may include predetermined limits on the amount, volume and type of transactions.

#### **XI. Termination of Customer Relationship**

If a finance company is unable to comply with the CDD measures required for a customer, including existing customer relationships established prior to the enactment of



this Instruction, it should terminate the customer relationship and consider filing a report to the Kuwait Financial Intelligence Unit.

## **XII. Reliance on third parties**

1. Finance companies may rely on third parties to perform some elements of customer due diligence if the arrangement is approved by the Central Bank of Kuwait and the following conditions are met:
  - a) They can immediately obtain all required customer due diligence information from the third party;
  - b) They are satisfied that copies of identification data and other documents related to customer due diligence measures will be made available from the third party upon request and without delay; and
  - c) They are satisfied that the third party is regulated, supervised or monitored and has measures in place for compliance with customer due diligence and record keeping requirements.
2. The ultimate responsibility for customer identification and verification shall remain with the finance company relying on the third party.

## **XIII. Suspicious Transaction Reporting Requirements**

1. Finance companies must report to the Kuwait Financial Intelligence Unit, within no later than two working days, any transaction or attempted transaction, regardless of its value, if they suspect that these transactions involve proceeds of crime or funds related or linked to or to be used for money laundering or terrorism financing.
2. Finance companies, their directors and employees are prohibited from disclosing to a customer or any other person the fact that a transaction report or any related information will be, is being or has been submitted to the Kuwait Financial Intelligence Unit, as per paragraph (1) above, or that a money laundering or terrorism financing investigation is being carried out. This does not preclude disclosures or communications between and among directors and employees of the finance company, in addition to lawyers, competent authorities, and the public prosecution regarding these operations.

## **XIV. New products and business practices**

1. Finance companies should identify, assess and, take appropriate measures to manage and mitigate the money laundering or terrorism financing risks that may arise in relation to:
  - a) The development of new products and new business practices including new delivery mechanisms for products and services; and
  - b) The use of new or developing technologies for both new and pre-existing products.

## **XV. Internal Procedures, Systems and Controls**

1. Finance companies are prohibited from accepting cash in excess of KD3000 or its equivalent in foreign currency in a single transaction or series of related transactions with a customer within one day. Any transactions in excess of the aforementioned

threshold shall be debited from the customer's bank account by using either checks, points of sale or other non-cash payment instruments permitted by the Central Bank of Kuwait.

2. When debiting the account of the customer originating the transaction, finance companies should ensure that the account debited is in the name of the originator.
3. The compliance officer should have the authority to act independently and report to senior management. The officer and other appropriate staff should have direct access to customer identification data and other CDD information, transaction records, and other relevant information.
4. The compliance officer should have appropriate experience and qualifications in the field of AML/CFT and finance companies should supply the CBK with details of the compliance officer, including his name, qualifications, contact number and email address. The finance company should promptly inform the CBK of any change related to the compliance officer.
5. The board of directors of the finance company shall periodically review the company's compliance with the requirements of the Anti-Money Laundering and Combating Terrorism Law. Such periodic review reports filed to the board of directors should include a statement on all suspicious transactions detected, implications and measures taken by compliance staff to strengthen the company's AML/CFT policies, procedures, systems and controls. The Board should also be informed of the results of any AML/CFT onsite inspections conducted by the CBK, including remedial actions required to be implemented by the finance company.
6. Finance companies must carry out independent auditing and testing to ensure that the compliance officer and company staff are performing their duties in accordance with the company's AML/CFT internal policies, procedures, systems and controls.
7. The finance company's external auditors report on the adequacy of the company's internal control systems should include information on the company's adherence to all applicable local laws, ministerial decisions and CBK instructions relative to AML/CFT, as well as the company's adherence to its own internal policies, procedures, systems and controls.
8. Finance companies must establish ongoing employee training to ensure that new and existing employees, including board members, executive and supervisory management and directors are kept informed of new developments, including current typologies of money laundering and terrorism financing and their obligations under the Anti-Money Laundering and Combating Terrorism Financing Law No. 106 of 2013, its Executive Regulation and the present Instruction.
9. Finance companies must define their fit and proper requirements and establish screening procedures to ensure appropriate standards when hiring employees. Employee screening procedures must ensure that:
  - employees have the high level of competence necessary for performing their duties;

- employees have appropriate ability and integrity to conduct the business activities of the financial institution;
- potential conflicts of interests are taken into account, including the financial background of the employee;
- persons charged or convicted of offences involving fraud, dishonesty or other similar offences are not employed by the company.

10. The requirements of paragraph (9) above apply to the nomination of board members and the appointment of executive and supervisory management members and directors.

#### **XVI. Record keeping requirements**

Finance companies shall maintain the following records and documents:

- a) All documents obtained through the customer due diligence process including documents evidencing the identities of customers and beneficial owners, account files and business correspondence, for at least five years after the business relationship has ended or a transaction with a customer who does not have an established business relationship with the company has been carried out;
- b) All records of transactions, both domestic and international, attempted or executed for at least five years following the attempt or execution of the transaction. Such records must be sufficiently detailed to permit the reconstruction of each individual transaction;
- c) Copies of suspicious transaction reports sent and related documents for at least five years after the date the report was made to the Kuwait Financial Intelligence Unit; and
- d) The risk assessment set forth in Section II, and any underlying information for a period of five years from the date the assessment was carried out or updated.

#### **XVII. Compliance with Other Resolutions**

Finance companies must have in place internal policies, procedures, systems and controls to ensure compliance with any resolutions issued pursuant to Article 25 of the Anti-Money Laundering and Combating Terrorism Law No. 106 of 2013.

#### **XVIII. Penalties and Legal Actions**

Any finance company breaching this Instruction is liable to the sanctions provided for in Article 15 of the Anti-Money Laundering and Combating Terrorism Law No. 106 of 2013.