

The Executive Bylaws
Module Sixteen

**Anti-Money Laundering and
Combating Financing of Terrorism**



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Chapter One
Scope of Application

Article 1-1

Excluding the definition of Licensed Person and Compliance Officer, the definitions set forth in the Law No. (106) of 2013 on Anti-Money Laundering and Combating Financing of Terrorism and the Executive Regulations thereof, as amended, shall apply to the terms set out in this Module.

Article 1-2

In accordance with the Law and these Bylaws, the Anti-Money Laundering and Combating Financing of Terrorism Law, and the international legitimacy resolutions issued in this regard, the Licensed Persons shall comply with the following procedures and regulations, to ensure the following:

1. Enhance integrity and credibility of the capital market.
2. Protect Licensed Persons and the clients thereof against illegal transactions, which may include money laundering, financing of terrorism, or any other criminal action.

The Units Subject to the Supervision of the Central Bank shall be exempted from the provisions of this Module.

Chapter Two

General Provisions

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Article 2-1

Requirements of Recommendations of the Financial Action Task Force Concerned with Anti-Money Laundering and Combating Financing of Terrorism

A Licensed Person must consider the nature of its business, organizational structure, type of clients and transactions in establishing Anti-Money Laundering and Combating Financing of Terrorism policies and procedures, and shall ensure that the measures taken by it are adequate and appropriate to meet the requirements and general objectives provided for in this Module.

Article 2-2

A Licensed Person must establish systems, policies, and procedures aimed to preventing money laundering and financing of terrorism. The senior management of the Licensed Person is responsible for effectively managing the risks facing the business, including the risks of money laundering and financing of terrorism emanating from clients, geographical location and delivery channels.

In addition, the senior management must commit to setting adequate and effective policies and procedures to prevent money laundering and financing of terrorism and to ensuring implementation and compliance with those policies and with all relevant regulatory and legal requirements. To ensure this, a Compliance Officer should be appointed at the senior management level with direct responsibility for over-sighting compliance with anti-money laundering and combating financing of terrorism policies and procedures, as well as other relevant legal requirements as set out in this Module and the anti-money laundering and combating financing of terrorism law. He is responsible for reporting the unit any suspected money laundering or financing of terrorism in accordance with this Module.

This shall be in accordance with the Financial Action Task Force recommendations on Anti-Money Laundering and Combating Financing of Terrorism require setting out and implementing anti-money laundering and combating which financing of terrorism procedures.

1

Policies and Procedures

Article 2-3

A Licensed Person is required to:

1. Issue an effective statement of policies and procedures aimed at preventing money laundering and financing of terrorism and, ensuring full compliance with all regulatory legal requirements, such as the maintenance of records and cooperation with the Regulatory Bodies responsible for compliance with the Anti-Money Laundering and Combating Financing of Terrorism Law and relevant resolutions, and submit those policies to the Authority through the Authority's electronic portal, including the timely disclosure of information.
2. Ensure that all officers, employees – and those who work for it (as consultants) – fully understand the content of these Bylaws, are aware of the requirements and take all precautions to prevent money laundering and terrorism financing.
3. Regularly review the policies and procedures on preventing money laundering and financing of terrorism to ensure their effectiveness, such as reviewing policies and procedures issued by the internal audit unit or Compliance Officer to ensure compliance with them. This review covers the following areas:
 - a. Assessment of the system for detecting any transactions of money laundering and financing of terrorism.
 - b. Evaluation and checking of reports on large or unusual transactions and verify their adequacy.
 - c. Review of the quality of reporting of suspicious transactions.
 - d. Assessment of the level of awareness of client service employees regarding their responsibilities.
4. Apply client acceptance policies and procedures to undertake client due diligence measures as set out in the Articles from (3-1) to (3-19) of Chapter Three, including taking into consideration the risk of money laundering and financing of terrorism depending on the type of client, transactions and business relationship, geographic locations and products and delivery channels.
5. Assess their risk of money laundering and financing of terrorism, including risks of new products and technologies. The risk assessment and any underlying information shall be documented in writing, kept up-to-date and readily available for the Authority upon request.
6. Put in place processes to identify, monitor, manage and mitigate money laundering and terrorism financing risks, giving consideration to:
 - a. Risk client.
 - b. Risks related to countries and geographical areas in which clients operate or the place of origination or destinations of transactions.
 - c. Risks related to the nature of products and services offered.
 - d. Risks related to the delivery channels for products and services.

In case there are factors indicating that there are high risks, the Licensed Person should apply enhanced client due diligence measures must be identified and include for instance the following:

1. Client risk factors:
 - a. The client's profile and background.
 - b. The nature of the client's business and degree of money laundering and terrorism financing risk.
 - c. A business relationship conducted in unusual circumstances.
 - d. Non-resident clients.
 - e. Legal person or arrangements that manage the assets of third parties.
 - f. Companies that have nominee shareholders or Shares in bearer form.
 - g. Activities which are cash-intensive or susceptible to money laundering or terrorism financing.
 - h. The ownership structure of the company that appears unusual or excessively complex with no visible economic or lawful purpose given the nature of the company's business.
 - i. Business relationships and transactions conducted other than "face to face".
 - j. Business relationships conducted in or with countries as identified in item (2) below.
 - k. High-risk Politically Exposed Persons ("PEPs") or clients linked to a PEP.
 - l. High net worth clients, or clients whose source of income or assets is unclear.
2. Country or geographic risk factors:
 - a. Countries classified by credible sources, such as mutual evaluation reports or published follow-up reports, as not having adequate anti-money laundering and combating terrorism financing systems.
 - b. Countries identified by the Kuwait Financial Intelligence Unit as high risk.
 - c. Countries subject to sanctions, embargos or similar measures issued by the United Nations for example.
 - d. Countries classified by credible sources as having significant levels of corruption or other criminal activity.
 - e. Countries or geographic areas classified by credible sources as providing funding or support for terrorist activities, or that have designated terrorist organizations operating within their territories.
 - f. Place of establishment of the client's business and location of the counterparties (correspondent party) which the client does business with, especially if the place of establishment or the location is in a country designated by the FATF or a country known to the Licensed Person as not applying adequate and sufficient anti-money laundering and combating financing of terrorism standards.

3. Product, service, transaction or delivery channel risk factors:
 - a. Anonymous transactions (which may include cash).
 - b. Business relationships or transactions conducted with clients that are not physically present for the purpose of identification.
 - c. Payment received from unknown or un-associated third parties.
7. Licensed Persons shall adopt the following measures to mitigate the money laundering and financing of terrorism risks:
 - a. Assessing the various risk factors;
 - b. Obtaining additional information on the client, beneficial owner, beneficiary and transaction;
 - c. Establishing a risk profile on clients and transactions
 - d. Applying enhanced client due diligence to high risk clients;
 - e. Updating more regularly the information on all clients;
 - f. Adopting other measures as may be prescribed by the Authority or the Kuwait Financial Intelligence Unit.
8. Develop mechanisms to exchange available information and protect confidentiality of information with financial institutions, domestic and foreign branches and Subsidiaries.

Application of Policies and Procedures to Branches and Subsidiaries of Licensed Person Outside the State of Kuwait

Article 2-4

A Licensed Person must ensure that overseas branches and Subsidiaries comply with the laws, regulations, and resolutions issued in Kuwait as well as the Licensed Persons (Parent Company) internal policies, programs and procedures concerning anti-money laundering and combating terrorism financing, and with the FATF recommendations to the extent permitted by the laws and regulations in the host country.

Article 2-5

A Licensed Person must pay special attention to the application of Article (2-4) in this chapter in its branches and Subsidiaries located in countries which do not or insufficiently apply the FATF recommendations, including countries designated as such by the FATE.

Article 2-6

Where anti-money laundering and combating financing of terrorism requirements of Kuwait and host countries differ, a Licensed Person must apply the best requirements on its branches and Subsidiaries to the extent permitted by the laws and regulations of the host country.

Article 2-7

Where an overseas branch or Subsidiary of a Licensed Person fails to meet any of the anti-money laundering and combating terrorism financing requirements applicable in Kuwait because the laws and regulations of the host country do not permit that or for any other reason, it shall inform the Authority immediately and comply with any guidelines issued in this regard.

Article 2-8

Cash Payments

At no time, whether at the beginning or during a business relationship, shall a Licensed Person accept cash from a client, whether for investment purposes or as payments for services provided by the licensed person.

With the exemption of trivial service fees provided by the Licensed Person, such as: account opening fees, fees for printing different types of documents and certificates, and any other services provide by the Licensed Person based on the following determinants:

1. Payments should be paid by the client or his legal representative.
2. Payment amounts for the services should not exceed KD 100.
3. Fees should be non-refundable.
4. Due service fees should be paid in the form of one payment and not be broken down into small payments,
5. Client Due Diligence (CDD) should be applied, with the consideration of reporting any suspicious cases.

Chapter Three Clients

Client Acceptance

Article 3-1

For the purposes of implementing the provisions of these Bylaws, a Licensed Person should, prior to accepting any client, prepare a “Know Your Client” form containing the minimum information required in accordance with the Articles from (3-5), (3-6), (3-8), (3-12) and (3-13) of this Chapter.

Client Acceptance Considerations

Article 3-2

A Licensed Person must have in place client acceptance policies and procedures to determine the type of clients that are likely to pose a higher risk of money laundering and financing of terrorism. It must adopt extensive and detailed CDD policies and procedures for high-risk clients, such as clear internal policies on the approval of a business relationship with such clients. This shall also apply to PEPs where additional CDD measures should be put in place.

Article 3-3

A Licensed Person must reconsider the risk assessment of a client if the pattern of his account activity following acceptance does not fit in with the Licensed Person's knowledge of the client, and must also consider making a suspicious transaction report.

Article 3-4

Excluding the cases that subject to Articles from (3-27) to (3-33) and Articles from (3-35) to (3-36) of this Chapter, a Licensed Person must not accept any client or open an account for a client without meeting the client face-to-face.

General Provisions on Client Due Diligence Procedures

Article 3-5

A Licensed Person must take all steps necessary to obtain valid and full data on the client, his financial situation and investment objectives. In all cases, anonymous accounts, accounts using false or fictitious names, or accounts for prohibited persons notified by the Authority must not be opened or maintained.

Article 3-6

CDD measures must be carried out on all clients, which require the Licensed Person to take the following steps:

1. Identify and verify the identity of the client using the original documents prescribed with Article (3-8) in this Chapter. This shall also apply to all persons with signatory authority over the account.
2. Understand the ownership and control structure of the client.
3. Identify and verify the identity of the beneficial owners of the account and people who control it using original documents.
4. Obtain information on the purpose and nature of the business relationship depending on the type of client, business relationship or transaction in order to apply ongoing CDD.
5. Ensure applying ongoing CDD, i.e. perform ongoing scrutiny of the transactions and account throughout the course of the business relationship to ensure that all transactions are consistent with the licensed person's knowledge of the client, the client's profile, source of wealth and funds.

Article 3-7

Exemption from verifying the identity of the beneficial owners.

Article 3-7-1

Notwithstanding the provisions of Article (3-6) of this Chapter, the Licensed Person shall be exempted from verifying the identity of the beneficial owners who invest through another Licensed Person by the Authority or by an equivalent foreign regulatory entity, provided that it shall be ensured, as the case may be, that the counterparty:

1. Is regulated and supervised by a competent authority.
2. Operates in a country that applies the FATF recommendations.
3. Applies, as a minimum, requirements for AML/CFT, including measures for CDD and identification of beneficial owners, that are consistent with the requirements of this Module and the FATF recommendations.

Article 3-7-2

The Licensed Person to whom the exemption provided for in Article 3-7-1 of this Module applies is bound to enter into an agreement with the counterparty, under which the counterparty agrees to provide the Licensed Person or the Authority with any information required of the beneficial owners, under which the counterparty shall provide the Licensed Person with an undertaking that he has fully implemented the Financial Action Task Force 's recommendations including measures for CDD towards the beneficial owners, as follows:

1. Before or during the course of opening an account or establishing a business relationship with the counterparty or any of the beneficial owners.
2. Before carrying out a transaction above the limit set forth in the Executive Bylaws of the Anti-Money Laundering and Combating Financing of Terrorism Law for a beneficial owner with whom the licensed person is not in an established business relationship, whether it is conducted as a single transaction or several transactions that appear to be linked.

3. Before carrying out a domestic or international electronic transfer for the beneficial owner.
4. Whenever there is a suspicion of money laundering or terrorism financing.
5. Whenever there are doubts about the veracity or adequacy of previously obtained beneficial owner identification data.

It shall also obtain sufficient adequate identification data on the beneficial owners, within the minimum data to be obtained.

Article 3-7-3

The provisions of Articles (1-7-3) and (3-7-2) of this Module shall apply in cases where a Licensed Person is undertaking a transaction with a company registered outside the State of Kuwait through an omnibus account or for named clients through a designated account, and where a Licensed Person deals with foreign client through a “Global Custodian”.

Article 3-8

When verifying the identity of the client or beneficial owner, a Licensed Person must check the valid and official original documents as follows:

1. Civil card for citizens and residents;
2. Passport or travel document for persons not residing in the state of Kuwait;
3. Commercial license issued by the Ministry for resident companies and entities and, in the case of non-resident companies and entities documents issued by competent authorities in the state in which they were incorporated or established;
4. Documents, papers, instruments, and court orders proving that a person has been appointed to represent the concerned person;
5. For clients not mentioned above, approved official identification documents attested by competent official authorities or bodies that issue these documents.

Article 3-9

Except where applicable to Articles (3-27) to (3-31) of this Chapter, the Licensed Person must interview the Client, the potential Client or the beneficial owner or his representative when verifying his identity before opening an account or establish a business relationship with him. In case the Client or his representative does not appear in person, the Licensed Person must comply with the provisions of Articles (3- 35) and (3- 36) of this Chapter.

Article 3-10

If there is doubt or difficulty in determining whether the document presented by the client to verify his identity is genuine, a Licensed Person must not open the account and shall consider the need to make a suspicious transaction report.

Article 3-11

A Licensed Person must retain copies of all documents used to verify the identity of the client pursuant to the provisions according to Articles from (4-2) to (4-10) in Chapter Four.

Article 3-12

For the purpose of assisting a Licensed Person to identify the beneficial owner of an account, the licensed person must, when establishing a business relationship, ask whether the client is acting for his own account or for the account of another party or parties. For this instance, the licensed person must obtain a paper signed by the client upon establishing the relationship certifying that the client is the beneficial owner of the account, or request other types of documents that the Licensed Person deems necessary.

Article 3-13

A Licensed Person must understand the purpose and intended nature of the business relationship or transaction. Additional information on the client might also be needed, including some or all of the following information:

1. Record of changes of address.
2. Copies of the financial statements.
3. Any relationship between the beneficial owners and signatories.
4. The nature and anticipated level of the activity to be undertaken through this relationship with the client.

Risk-based Approach (Reduced or Enhanced Client Due Diligence)**Article 3-14**

All clients shall be subject to CDD measures, taking into account the risks identified by the Licensed Person and set forth in the Articles from (2-1) to (2-4) in Chapter Two. The only exception to this rule (i.e. reduced measures are applied) is on the basis of lower risk, such as when information on the identity of the client and beneficial owner is publicly available, in the case where the client is a company listed on the Securities exchange of a country sufficiently implementing the FATF recommendations, or is a Subsidiary of such a Listed Company. However, where such a Listed Company is subject to the control of an individual or a small group of individuals, a Licensed Person shall carefully review the anti-money laundering and combatting terrorism financing risks and consider whether it is necessary to verify the identity of such individual(s), be it an owner or a beneficial owner.

Article 3-15

A Licensed Person shall adopt the enhanced CDD measures referred to in this Module on higher risk type of clients, business relationships or transactions. These measures vary from case to case depending on the client's background, type of transactions and circumstances thereof. The Licensed Person must be very cautious in exercising its own judgment when applying these measures to clients of that particular high risk type.

Article 3-16

A Licensed Person must establish clearly in its client acceptance policies the risk factors for determining the types of clients and activities that are to be considered as high risk. Such risk factors include client risk, country, geographic risks, product and service risk, and delivery channels risks, without losing sight of other relevant risks.

Article 3-17

In assessing whether or not a country sufficiently applies the FATF anti-money laundering and combating terrorism financing standards, a Licensed Person must:

1. Assess the standards of prevention of money laundering and terrorism financing. The Licensed Person can rely on the information and data made available on the country concerned by relevant authorities. The higher the risk, the greater the due diligence measures that must be applied when undertaking business with a client from the country concerned.
2. Pay particular attention to assessments of compliance of such country with the FATF recommendations that have been undertaken by the FATF, FATF-style regional bodies, or International Institutions such as the International Monetary Fund or the World Bank.
3. Maintain ongoing vigilance concerning money laundering and terrorism financing and take into account information that is available to the Licensed Person about the level of anti-money laundering and combating terrorism financing standards in the country concerned where any of its clients operate.

Article 3-18

Apart from the risk factors set out in Article (3-16) of this Chapter, the following are considered high risk types of clients:

1. Complex legal arrangements that have no apparent legal or economic purpose;
2. Any person (including companies and other financial institutions) from or in countries which do not or insufficiently apply the FATF recommendations, for example countries designated as such by the FATF;
3. PEPs.

Article 3-19

A Licensed Person must perform enhanced due diligence on higher risk clients. Among the measures to be applied as a minimum:

1. Obtaining declarations in writing from the beneficial owners about the identity of, and relationship with the directors and substantial shareholders;
2. Obtaining additional information on the purpose and reasons for opening the account, business or employment background, source of funds, identification data of the client and beneficial owner and on the intend nature of the business relationship;
3. Assigning staff to serve the client and those staff must conduct CDD and ongoing monitoring in order to ensure that unusual transactions are analysed and suspicious transactions are identified on a timely basis;
4. Conducting face-to-face meetings with the senior management of the client on a regular basis throughout the business relationship;
5. Obtaining the approval of the senior management of the Licensed Person when opening an account.

Politically Exposed Persons (PEPs)

Article 3-20

A Licensed Person shall have risk management systems in place to identify whether a client, potential client or a beneficial owner is a PEP. The Licensed Person shall consider such accounts higher risk and subject them to ongoing and enhanced monitoring.

Article 3-21

If a Licensed Person determines that the client or beneficial owner is a PEP, it should apply the following additional client due diligence measures:

1. Have the opening or operation of an account for any of the persons mentioned in this chapter must be approved by the senior management of the Licensed Person.
2. Where a Licensed Person has accepted a client, and the client or beneficial owner becomes or is found to be one of the persons mentioned in this article, the Licensed Person shall obtain the approval of the senior management to continue the business relationship;
3. Take measures to establish the source of wealth and source of funds of PEPs or of any person associated with them, who can be a client or beneficial owner.

Article 3-22

If a Licensed Person determines that a Client or beneficial owner is a domestic PEP or a person who is has been entrusted with a prominent function by an international organization, the measures referred in Article (3-21) of this Chapter shall be applied wherever the licensed person determines the risk of money laundering or terrorism financing to be higher.

Non-Profit Organizations or Entities

Article 3-23

A Licensed Person shall have in place policies, procedures and internal controls to comply with the requirements regarding the opening and handling of accounts and transactions of non-profit organizations and entities. The following requirements shall be observed when dealing with accounts of any such organizations and entities:

1. Non-profit organizations and entities must have an official license issued by the relevant government authority specifying the purposes and activities of the organization.
2. Due diligence measures shall be applied when dealing with such organizations.

Cases where the Licensed Person must perform client due diligence

Article 3-24

A Licensed Person must carry out CDD measures when:

1. Opening an account or establishing a business relationship.
2. There is a suspicion of money laundering or financing of terrorism.
3. There is doubt about the veracity or adequacy of data, information or documents previously obtained from the client or beneficial owner for the purpose of verifying his identity.

Article 3-25 A Licensed Person must verify the identity of the client, potential client and beneficial owner before and during the course of establishing the business relationship or carrying out the transaction. When the Licensed Person is unable to perform CDD measures satisfactorily at the account opening stage or prior to carrying out the transaction, it must terminate the business relationship and not perform any transaction, and must make a suspicious transaction report (STR). The provision also applies to existing client relationships established prior to the enactment of this Module.

Collective Investment Schemes

Article 3-26 Where a Licensed Person acts for a client who is investing in a Collective Investment Scheme, it shall carry out CDD on the client and comply with the requirements of these Bylaws. Except that where the client is counterparty licensed by the Authority or an equivalent foreign regulatory entity, the licensed person need not verify the identity of the beneficial owners that are investing through the counterparty provided that the requirements of Article (3-7) of this Chapter are met.

Reliance on Third Parties for Client Due Diligence

Article 3-27 This article refers to a third party that introduces clients to a Licensed Person and performs client identification and verification on its behalf. For the purposes of this section, the third party must either be a Financial or Banking Institution that engages in securities and is regulated by the Authority. If the third party offers its services specified in this Article outside the State of Kuwait, it must be licensed by a competent regulatory entity in a foreign country implementing the FATF recommendations.

Article 3-28 A Licensed Person may rely on the third party to apply the requirements of paragraph (1, 2, and 3) of the CDD measures which are set out in Article (3-6) of this Chapter for Clients who have headquarters in the State of Kuwait, provided that the criteria set out in this Chapter are met. In all cases, the ultimate responsibility of client identification and verification always remains with the Licensed Person and not with the third party, with the application of Article (3-9) of this Chapter.

Article 3-29 A Licensed Person may rely on third parties to perform CDD if the client is located in a country other than Kuwait.

Article 3-30 Prior to reliance, a Licensed Person must ensure that it is reasonable to rely on a third party to apply the CDD measures and that these measures are as rigorous as those performed by the Licensed Person for its clients. The Licensed Person must establish clear policies to determine whether the third party in question possesses an acceptable level of reliance.

Article 3-31

A Licensed Person relying on a third part must:

1. Obtain from the third party copies of the CDD documentation and information as required by paragraph (1, 2, 3) of Article (3-6) of this Chapter, including the information referred to in Article (3-1) of this Chapter.
2. Take adequate steps to ensure that copies of documentation and data relating to the CDD requirements will be made available from the third party upon request. Such documents cover establishing responsibilities in writing or reaching an agreement with the third party whereby the latter commits to, immediately, present and make available all the documentations upon request. The Licensed Person will be then permitted to verify the CDD measures undertaken by the third party at any stage.
3. Ensure that the third party is regulated, monitored and supervised by a competent authority, and has measures in place to comply with the client due diligence and record keeping requirements in line with this chapter and the FATF recommendations.

Article 3-32

A Licensed Person must not rely on third parties based in a country considered as high risk, such as countries that have no anti-money laundering and combating terrorism financing systems, or the anti-money laundering and combating terrorism financing systems are inadequate.

Article 3-33

A Licensed Person must conduct annual reviews to ensure that the third party continues to conform to the standards set forth in Articles from (3-27) to (3-32) in this Chapter. This may involve reviews of relevant policies and procedures and sample checks of the due diligence conducted.

Acquisition

Article 3-34

When a Licensed Person undertakes an Acquisition Offer, in whole or in part, of a financial institution in a foreign country, the licensed person shall ensure that the acquired institution has or will perform CDD measures consistent with the requirements of this Module at the time of Acquisition Offer, by undertaking the following:

1. Ensure that the acquired institution holds CDD records for all the clients, including client identification information, thus precluding any doubts that the Licensed Person might have about the veracity or adequacy of the information acquired.
2. The Licensed Person shall conduct enquiries on CDD measures performed by the acquired institution to ensure the adequacy of such measures and controls with combating money laundering and terrorism financing.

Non-Face-to-Face Business Relationships

Article 3-35

A Licensed Person shall consider money laundering and terrorism financing threats that may arise from the development of new products or business practices, including new delivery mechanisms, and the use of new or developing technologies, and must formulate policies, procedures and internal controls to prevent such threats.

Article 3-36

A Licensed Person must formulate policies, procedures and internal controls that address the risks associated with non-face-to-face business relationships and transactions. Risks arising from the implementation of specific and effective measures during the course of the business relationship should be considered as part of ongoing CDD.

Ongoing CDD and Unusual Transactions

Article 3-37

A Licensed Person must monitor on an ongoing basis the business relationship it has with clients, and must ensure that the transactions are consistent with the information the Licensed Person has on the client's business, risk profile and source of funds.

Article 3-38

A Licensed Person must scrutinize and pay attention to all complex and large transactions and all unusual patterns of transactions which have no economic or visible legal purpose.

Article 3-39

A Licensed Person must scrutinize and pay attention to business relationships or transactions with clients or financial institutions from countries which do not or insufficiently apply the FATF recommendations. Where the Authority advises the Licensed Person that such country insufficiently applies the FATF recommendations, the Licensed Person shall treat all business relationships and transactions from that country as high risk and shall apply the measures set out in Article (3-19) of this Chapter.

Article 3-40

A Licensed Person must obtain adequate information on the purpose and nature of all transactions, including the examination of transactions that have no economic or visible legal purpose and of findings established in writing, which must be retained for at least ten years after the date of transaction and made available to the Authority, and internal and external auditors if requested.

Chapter Four

Client's Records

4

Review and Updating of Records

Article 4-1

Data collected under CDD must be kept up-to-date, accurate and relevant. The Licensed Person must undertake a periodical and continuous review and as-needed reviews of existing records, particularly for high risk categories of clients or business relationships when trigger events occur, such as:

1. An existing client applying to open a new account or establishing a new relationship, or significantly altering the nature of the existing relationship;
2. When there is a transaction that is unusual or not in line with the client's normal trading patterns based on the Licensed Person's knowledge of the client;
3. When the Licensed Person is not satisfied that it has sufficient information about the client or has doubts about the veracity or adequacy of previously obtained data.

Record Keeping Requirements

Article 4-2

A Licensed Person shall comply with the record keeping requirements contained in this Module and any instructions or guidelines issued by the Authority, and must keep a record of all client identification data and other previously obtained information and documents, account files, business correspondence, as well as all transactions records.

Article 4-3

A Licensed Person shall maintain sufficient records to permit reconstruction of any transaction, including the amounts and type of currencies involved, so as to provide evidence for prosecution of criminal activity, if necessary.

Article 4-4

A Licensed Person shall keep information regarding the clients' accounts, in particular the following:

1. Details of the client and beneficial owner(s) (if any) of the account, and any other CDD information required;
2. Account details, including the volume of funds flowing through the account;
3. For transactions, the origin of the funds, the form in which the funds were provided or withdrawn, checks, transfers and others, the identity of the person undertaking the transaction, the destination of the funds, and the instructions – if any – given to carry out such a transfer.

Article 4-5

A Licensed Person shall ensure that all client and transaction records and information are made available to the Authority upon request.

- Article 4-6** A Licensed Person shall maintain records on all domestic and international transactions, whether they have been attempted or already conducted, for at least five years from the date of transaction. Such records must be in as much detail as to allow retracing each transaction separately.
- Article 4-7** A Licensed Person shall keep all CDD records, account files and business correspondence for at least five years after the account is closed.
- Article 4-8** A Licensed Person shall keep risk assessments and any information thereof for at least five years from the date on which they were conducted or updated.
- Article 4-9** In situations where the client records are subject to ongoing investigations or subject of a suspicious transaction report, they shall be retained until the closure of the case, even if this is still ongoing after five years.
- Article 4-10** A Licensed Person may retain documents as originals or copies, in paper or electronic form, provided that they are admissible as evidence in a court of law.

Chapter Five

Suspicious Transactions Reporting

- Article 5-1** A Licensed Person must immediately report to the unit any activity or transaction that is related or suspected to be related to money laundering, financing of terrorism, terrorist acts, or terrorist organizations.
- Article 5-2** A Licensed Person must submit to the unit along with the STR a detailed report setting out all available data and information about the suspicious transactions and Related Parties. The report shall, as a minimum, include the following details:
1. Account statements for a period of 6 months.
 2. Copies of all account opening documents.
 3. Any data related to the nature of the reported transactions.
 4. The indications and justifications for the suspicion, along with all supporting documents.
- Article 5-3** Suspicious transactions must be reported regardless of whether they are related to other suspicious transactions of the client in question that have already been reported to the unit.
- Article 5-4** A Licensed Person shall appoint a Compliance Officer at the senior management level to be responsible for the implementation of the provisions of the Anti-Money Laundering and Combating Financing of Terrorism Law and any relevant laws, and of the requirements of this Module. The Licensed Person shall instruct all staff to promptly refer to the Compliance Officer any complex, huge, or unusual transaction, or any transaction that raises doubts or suspicion, or any activity that is related or suspected to be related to money laundering, financing of terrorism, terrorist acts, or terrorist organizations in order to take necessary action for referral to the FIU. The Compliance Officer must be a registered and qualified person, and have practical experience in anti-money laundering and combating financing of terrorism.
- Article 5-5** The executive management, including the Compliance Officer with the Licensed Person, shall be concerned with the implementation of reporting procedures to the Kuwait Financial Intelligence Unit. The executive management must play on a regular basis an active role in the identification and reporting of suspicious transactions, and shall review reports of large or irregular transactions generated by the Licensed Person's internal systems, as well as review any reports made by an employee of the Licensed Person.

- Article 5-6** In the event any of the employees of the Licensed Person brings a suspicious transaction to the attention of the Compliance Officer, the circumstances of the case shall be reviewed at that level to determine whether the suspicion is justified. If the executive management has decided, based on the recommendation of the Compliance Officer, not to report the transaction to the Kuwait Financial Intelligence Unit, the reasons for this shall be fully documented.
- Article 5-7** A Licensed Person must keep records of all transactions referred to the Compliance Officer, together with all internal observations and analysis done in relation to them. A register must be maintained of all suspicious transaction reports made to the Kuwait Financial Intelligence Unit as well as of all the reports made by employees, including suspicious transaction reports that the executive management has decided not to report to the Kuwait Financial Intelligence Unit based on the recommendation of the Compliance Officer.
- Article 5-8** A Licensed Person must verify it has received an acknowledgment of receipt from the Kuwait Financial Intelligence Unit for any suspicious transaction report.
- Article 5-9** A Licensed Person must continue to monitor the account and the client, and must follow up with the Kuwait Financial Intelligence Unit on the status of the suspicious transaction report if appropriate or in the case where a response is not received from the Kuwait Financial Intelligence Unit regarding a suspicious transaction report.
- Article 5-10** Where the Kuwait Financial Intelligence Unit requires further information from a Licensed Person to follow up on a suspicious transaction report, a Licensed Person must provide the information promptly and without delay.
- Article 5-11** In all circumstances, a Licensed Person, and Members of its Board of Directors, and employees are prohibited from disclosing to a client or any other person the fact that they have made or are considering making a suspicious transaction report or provided or are considering providing any other information related to the unit or any money laundering or terrorism financing investigation to the Kuwait Financial Intelligence Unit. A Licensed Person shall at all times keep its reporting of suspicious transactions highly confidential, and reports that are to be reviewed by the Compliance Officer shall be accessible only by specifically authorized staff of the Licensed Person.

Article 5-12

Whenever a suspicious transaction report has been made to the Kuwait Financial Intelligence Unit and it becomes necessary to make further enquiries of the client, great care must be taken to ensure that the client does not become aware that the suspicious transaction report has been made.

A Licensed Person shall continue its business dealing with the reported clients as usual, it must not warn its clients or other relevant parties of the suspicious transactions, and it shall await further actions made with regard to the suspicious transaction report.

Article 5-13

A Licensed Person's internal regulations shall stipulate the sanctions applicable to anyone who violates the ban stipulated in Articles (5-11) and (5-12) of this Chapter.

Chapter Six

Designated Persons on the UN Terrorist List

Article 6-1

In accordance with the provisions of Article (25) of Law No. (106) of 2013 Anti-Money Laundering and Combating Financing of Terrorism, and in compliance with the Ministerial Resolutions that are necessary for the implementation of the resolutions of the United Nations Security Council pursuant to Chapter Seven of the United Nations Charter Related to Terrorism and Combating Proliferation of Weapons of Mass Destruction, a Licensed Person must conduct the following:

1. Comply with the provisions of the Ministerial Resolutions mentioned above.
2. Set adequate policies and procedures to ensure the implementation of all the obligations mentioned in those Resolutions.

Chapter Seven

Continuing Obligations

Internal Policies and Compliance

Article 7-1

A Licensed Person shall develop and implement internal policies, procedures and controls to help prevent money laundering and terrorist financing and must communicate these to its employees.

In addition, a Licensed Person shall send its internal policies, procedures to the Regulatory Body upon request.

Article 7-2

The internal policies and procedures must implement and comply with all relevant regulatory and legal requirements pertaining to AML/CFT and include risk assessment of clients and transactions, CDD measures, record retention, the scrutiny of transactions undertaken throughout the course of the business relationship, the analysis of unusual transactions, the obligation to make a suspicious transaction report to the unit, and adequate screening procedures to ensure high standards when hiring employees. The internal policies, procedures, systems and controls should be consistent with the licensed person's size, and nature and scope of operations and should be adopted by the Board of Directors of the Licensed Person.

Article 7-3

A Licensed Person shall ensure that the Compliance Officer and any of its staff performing compliance functions may act independently and have timely access to all client and transaction records and other relevant information which they may require to discharge their functions.

Article 7-4

A Compliance Officer must have appropriate experience and qualifications in field of anti-money laundering and combating terrorism financing.

Article 7-5

A Compliance Officer shall undertake the following duties:

1. Develop, update and implement the Licensed Person's systems, procedures and controls on anti-money laundering and combating terrorism financing.
2. Keep pace with developments in anti-money laundering and combating terrorism financing laws and regulations, trends, techniques, and update indicators of money laundering or terrorist financing.
3. Ensure that the Licensed Person complies with policies and procedures to combat money laundering and terrorist financing.
4. Receive directly from staff any reports of suspicious transactions or activities and analyze those reports and then decide whether to file an STR with the Kuwait Financial Intelligence Unit or not.
5. Prepare an annual report to the board of the Licensed Person setting out all actions that have been taken to implement the internal policies, procedures and controls and any proposal for increasing the effectiveness and efficiency of the procedures. A copy of the report shall be submitted to the Authority.
6. Ensure that staff of the Licensed Person maintains all necessary records, documents and reports.
7. Organize ongoing training programs and plans for all staff of the Licensed Person.

Auditing

Article 7-6

A Licensed Person shall establish an adequately resourced and independent internal audit functions to verify the compliance with the internal policies, procedures, systems and controls and ensure their effectiveness and conformity with the provisions of the Anti-Money Laundering and Combating Financing of Terrorism Law and these Bylaws. The internal audit in the Licensed Person shall regularly assess the effectiveness of the licensed person's internal anti-money laundering and combating terrorism financing policies, procedures and controls.

Article 7-7

The Licensed Person shall assign an External Auditor to prepare an assessment report on the level of compliance with all legislative requirements and determinants set forth in the Anti-Money Laundering and Combating Financing of Terrorism Law, in addition to the instructions issued by the Authority in this regard, as well as the level of compliance with its own internal policies, procedures, systems and controls.

Training

Article 7-8

A Licensed Person must take all appropriate steps to ensure that their staff, directors, Members of a Board of Directors, and executive and supervisory management members receive regular training on:

1. AML/CFT laws and regulations, and in particular, CDD measures, detecting and reporting of suspicious transactions.
2. Prevailing techniques, methods and trends to combat money laundering and terrorist financing.
3. The Licensed Person's internal policies, procedures and controls on anti-money laundering and combating terrorism financing and the responsibilities of staff in combating money laundering and terrorist financing.

Article 7-9

A Licensed Person must have educational programs in place for training all new and current employees. Ongoing training must also be provided at regular intervals to update the staff's information, build their capacities and ensure they are well aware of their responsibilities; in particular those who deal with the public directly and help clients open new accounts.

Article 7-10

When choosing staff, a Licensed Person must ensure that they meet the requirements stated in the regulations of the Authority on efficiency and integrity and ensure that they are qualified and possess a high level of efficiency to enable them to discharge their functions.

Chapter Eight Penalties

Article 8-1

Without prejudice to the sanctions imposed under the Anti-Money Laundering and Combating Financing of Terrorism Law and any other relevant laws, in case it is proved that the Licensed Person, or any Member of his Board of Directors, his managers, or his employees has violated the provisions stipulated in this Law and its Bylaws or the Anti-Money Laundering and Combating Financing of Terrorism Law and its Executive Bylaws or the relevant ministerial resolutions, the Authority may impose one or more of the measures and penalties stipulated in the Anti-Money Laundering and Combating Financing of Terrorism Law and its Executive Bylaws and the ministerial resolutions and the regulations. It may also take disciplinary actions against them pursuant to the Law and these Bylaws.

DISCLAIMER:

This “translation” of the Bylaws of the Capital Markets Authority from Arabic into English is provided solely for reference. No translation can exactly reflect every aspect of an original text and accordingly this “translation” may be used for guidance but not for legal purposes. Only the Arabic original shall be considered for legal proceedings and legal actions before the competent courts of jurisdiction and in any arbitration mechanism agreed upon by contracting parties to any transaction made under the Law and the Bylaws thereof. The Capital Markets Authority shall not be responsible for any mistake, error and/or misinterpretation made or given by any party based on that party’s interpretation of the Law and the Bylaws whether arising from a reading of the Arabic text or, specifically in the context of this document, the English “translation”. The original Arabic versions, as approved and accordingly published by the Authority, shall constitute the only source of the provisions and regulations of the Law and its Bylaws.