

**S.I. 94 of 2023**

**ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM ACT, 2020**

*(Act 5 of 2020)*

**Anti- Money Laundering and Countering the Financing of Terrorism (Reliance on Regulated Persons) Regulations, 2023**

In exercise of the powers conferred by section 42 as read with section 97 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), the Minister responsible for Finance makes the following regulations —

**Citation**

1. These regulations may be cited as the Anti-Money Laundering and Countering the Financing of Terrorism (Reliance on Regulated Persons) Regulations, 2023.

**Interpretation**

2. In these regulations, unless the context otherwise requires —

“competent supervisory authority” means —

- (a) the competent supervisory authority in the jurisdiction where the parent company of the group is situated, of which the subsidiary being a reporting entity are part of, that is involved for the understanding of group policies and controls at group-wide level; and
- (b) the competent supervisory authority in the jurisdiction where the subsidiary company of the group being a reporting entity are situated, that is involved for the branches or subsidiaries of the group.

“group” means several entities or arrangements operating closely together within a group, whereby the parent company exercises control and coordinating functions over the rest of the branches or subsidiaries; and

“regulated person” shall have the same meaning assigned to it in section 42 (3) of the Act.

### **Reliance on Regulated persons**

3.(1) No reporting entity shall establish a reliance arrangement with a regulated person, without conducting due diligence measures on the regulated person and undertaking a relationship risk assessment of the proposed reliance arrangement with the regulated person, in order to —

- (a) determine that the risk appetite of the regulated person is in line with that of the reporting entity; and
- (b) ensure that, in placing such reliance, it meets its obligations under the Act.

(2) Where a reporting entity relies on a regulated person to carry out customer due diligence on its customers, the reporting entity shall —

- (a) immediately upon the commencement of a reliance arrangement or opening of the account, obtain from the regulated person —
  - (i) the identity of the customer under section 35(2)(a) of the Act;
  - (ii) the identity of the beneficial owners of the customer under section 35(2)(c) of the Act;
  - (iii) where the customer is a body corporate, the ownership and control structure of the body corporate; and

(iv) the purpose and intended nature of the reliance arrangement with the customer;

(b) ensure that the regulated person provides copies of identification and verification evidence of the customers and other relevant documentation related to customer due diligence requirements, held or maintained by the regulated person within 3 working days from the date of a request from a reporting entity.

(3) A reporting entity shall not rely on a regulated person in circumstances where the regulated person is relying on another person to conduct and maintain information on the customer due diligence of a customer.

(4) Where a reporting entity has been notified pursuant to regulation 4(3)(d) or becomes aware that a regulated person on whom it has relied upon to apply customer due diligence measures is about to cease to carry on business, the reporting entity shall immediately take all reasonable steps to take possession of and keep the records of the customer due diligence measures applied with respect of its customers for the period referred to in section 47(2) of the Act.

(5) Subject to sub regulation (6), the obligation for a reporting entity to ensure that the regulated person has measures in place to comply with customer due diligence shall not apply where the reporting entity and the regulated person are part of the same group and that group —

(a) applies at the group level customer due diligence and record keeping requirements and programmes against money laundering and financing of terrorism that are at least equivalent to those specified in the Act and these regulations;

(b) is regulated, supervised or monitored for implementation and compliance with those requirements and programmes by a competent supervisory authority with the

responsibility for regulating, supervising or monitoring compliance with such requirements and programmes; and

- (c) adequately mitigates, through its, anti-money laundering and countering the financing of terrorism policies, any higher country risk.

(6) Notwithstanding anything contained in these regulations, a reporting entity has the ultimate responsibility to carry out customer due diligence measures on its customers and shall be liable for any failure to do so, under the provisions of the Act.

(7) The supervisory authorities specified in section 55 of the Act, may determine, based on the level of country risk, countries that do not meet the conditions for reliance on regulated persons, thus, prohibiting reporting entities from relying on such services from such designated countries.

#### **Written Agreement with regulated person**

4.(1) When placing reliance on a regulated person to undertake customer due diligence measures, a reporting entity shall enter into a written agreement with the regulated person, before entering into a reliance arrangement.

(2) The written agreement shall be valid in respect of —

- (a) every customer for which the regulated person applies measures stipulated in sub regulation (1); and
- (b) the regulated person with whom the reporting entity has developed a reliance arrangement.

(3) The written agreement shall have clear contractual terms in respect to the obligations of the regulated person including obligations to —

- (a) obtain and maintain the necessary identification documentation and records and provide certified true copies of the identification evidence and other documents relating

to the obligation of due diligence as requested by the reporting entity within 3 working days as required under section 42(2)(c)(ii) of the Act which may be used as evidence for all material purposes including the court cases;

- (b) apply customer due diligence measures on an ongoing basis;
- (c) keep records of the customer due diligence measures applied for the period referred to in section 47(2) of the Act;
- (d) notify the reporting entity of its intention to cease business at least 30 days prior to the date of ceasing to carry on business and provide, to the reporting entity, all records of customer due diligence measures applied in respect of the customers.

(4) Sub-regulation (2) shall not apply where the written agreement between the reporting entity and the regulated person has been terminated, but —

- (a) the obligations contained in the agreement, including customer due diligence information maintained by the regulated person, are transferred to another regulated person who has —
  - (i) agreed to be bound by the written agreement in relation to the reporting entity; or
  - (ii) entered into another written agreement with the reporting entity comprising, at a minimum, of the same obligations contained in the agreement;
- (b) all the customer due diligence information maintained by the regulated person has been transferred to the reporting entity to maintain.

(5) Any relevant supervisory authority may request a copy of any written agreement entered into by a reporting entity and a regulated person

for reliance purposes pursuant to these regulations and the reporting entity shall comply with that request.

(6) A reporting entity who fails to comply with a request under sub-regulation (5) shall be subject to an administrative sanction under section 60 of the Act.

(7) Upon the date of the coming into force of these regulations, a reporting entity shall, in relation to every customer, modify any existing agreement, or enter into a new agreement, with a regulated person to ensure compliance with the requirements of these regulations.

### **Obligation to test Reliance Arrangement**

5.(1) Every reporting entity shall test its reliance arrangement with its respective regulated persons by carrying out a periodic review of the customer due diligence measures of the regulated person to satisfy itself that —

- (a) the requirements of regulation 3 are being complied with;
- (b) customer due diligence documentation and records shall be retrieved without undue delay and that the quality of documents and records attained are sufficient; and
- (c) the terms and conditions of the written agreement entered into pursuant to regulation 4 are being adhered to.

(2) The periodic review referred to in sub-regulation (1) shall be carried out on an on-going basis guided by consideration of risks and in accordance with any guidelines issued by the relevant supervisory authorities from time to time.

(3) Where, as a result of a test carried out, the reporting entity is not satisfied that the regulated person has appropriate policies and procedures in place, maintains appropriate records, fails to provide evidence of those records (if requested to do so) in accordance with the timeframes under section 42(2)(c)(ii) of the Act, the reporting entity shall terminate the reliance arrangement with the regulated person.

(4) Where a reporting entity terminates its reliance arrangement with a regulated person pursuant to sub-regulation (3), the reporting entity shall take necessary measures to obtain any due diligence records which remain with the regulated person, prior to the termination of the reliance arrangement.

6. Every reporting entity shall ensure that any reliance arrangement that were in existence between the reporting entity and a regulated person shall comply with the provisions of these regulations within 12 months of the coming into force of these regulations.

**MADE this 31<sup>st</sup> day of October, 2023.**

**NAADIR HASSAN  
MINISTER OF FINANCE,  
NATIONAL PLANNING AND TRADE**

---