



BANKY FOIBEN'I MADAGASIKARA
COMMISSION DE SUPERVISION BANCAIRE ET FINANCIERE

Instruction n° 001/2023-CSBF amending and supplementing certain provisions of instruction n° 006/2007-CSBF relating to the prevention and fight against money laundering and terrorist financing, as amended by instruction n° 001/2022-CSBF of June 27th, 2022

The Banking and Financial Supervision Commission (CSBF),

Having regard to law n° 2020-011 of September 1st, 2020 on the Banking Act,

Having regard to law n° 2018-043 of February 13th, 2019 on the fight against money laundering and the financing of terrorism,

Having regard to law n° 2017-026 of February 8th, 2018 on microfinance,

Having regard to Act 2016-056 of February 2nd, 2017 on electronic money and electronic money institutions,

Having regard to Instruction n° 001/2022-CSBF of 27 June 2022 amending and supplementing certain provisions of Instruction n° 006/2007-CSBF relating to the prevention and fight against money laundering and terrorism financing,

D E C I D E D

Article 1. - Purpose

The purpose of this Instruction is to amend and/or supplement certain provisions of Instruction 006/2007-CSBF relating to the prevention and fight against money laundering and terrorism financing as amended by Instruction 001/2022-CSBF of June 27th, 2022, known as the "AML/CFT Instruction".

Section 1 - Amended provisions

Article 2. - The provisions of articles 11, 17, 19, 21, 22, 32, 34 and 46 of the AML/CFT instruction above mentioned are amended and/or supplemented as follows:

Article 11 new - Subject institutions may, under the conditions defined in article 16, point (e) of the law n° 2018-043 referred to above, use third parties* to ensure the identification of their customers. In all cases, the subject institutions remain responsible for identifying of their clientele.

Where the third party belongs to the same financial group, subject institutions must ensure that :

- the group implements the due diligence requirements relating to customers, record keeping and AML/CFT programs;
- the effectiveness of this implementation is monitored at group level by a competent authority;
- the group's AML/CFT policies could mitigate in a satisfactorily way the highest identified risks.

Article 17 new - Subject institutions must ensure the identity and address of their customers, as well as their beneficial owners in the following situations:

- before entering into a contractual relationship, to open an account or passbooks, to take custody of securities, values or vouchers, to allocate a safe or to establish any other business relationship;
- as soon as possible for existing customers, and at the very least when a significant transaction occurs, when the standards for customer identification documents change substantially, when a significant change occurs in the way the account operates and when the establishment realizes that it does not have information on an existing customer;
- when they have doubts about the truthfulness or relevance of data previously obtained;
- whenever there is a suspicion of money laundering or terrorist financing in relation to customers.

The verification must be updated when there is a change, in particular on the status, the customer's situation, the nature of the business relationship and other relevant information that may generally affect the business relationship.

The obligations of identification and verification of identity will be considered as fulfilled by the institutions subject to it with the obtaining and keeping of all the following information:

- name ;
- first name(s);
- age or date of birth;
- address ;
- mobile telephone line number;
- occupation.

In addition to the customer segmentation applied within them, subject institutions must define policies and apply procedures for classifying their customers before entering and throughout the business relationship. The customer classification must be in line with the profile of each customer and the exposure to the risk of money laundering and/or terrorist financing.

The criteria for classifying customers are set by circular from the Chairman of the CSBF.

Subject institutions must assign a rating linked to money laundering and/or terrorist financing to each client according to the risks identified, in particular relating to the client's profile, the geographical factor, the types of transactions and the sectors of activity.

The rating to apply for a client can be low, medium, high.

The documents, data and information collected as part of the customer identification process must be kept up to date and their relevance must be checked regularly by reviewing existing files, particularly for higher-risk customer categories.

Article 19 new - The identification of a legal person or a legal entity not having legal personality is carried out on the basis of the original or the certified true copy of any act or official register extract establishing its name, its legal form and registered office, as well as the powers of the persons acting on its behalf, notably by the production of the articles of association and any document establishing that it has been legally registered and that it has a real existence at the time of identification.

Subject institutions shall ensure, under the same conditions as those set out in paragraph 2 of the previous article, the true identity and address of persons authorized to act on behalf of the legal person or legal structure to be identified.

Subject institutions must have the information necessary to understand the ownership and control structure of the legal person and the legal entity not having legal personality and to determine the natural persons who ultimately own or control them. To this end, they must:

- require the information on the legal entity specified in paragraph 1 of this article and obtain the names of the persons occupying the steering functions;
- verify whether the customer's beneficial owner is a legal entity or a legal entity without legal personality and take appropriate measures regarding their identity.

The required information for the customer's beneficial owner identity verification, whether a legal entity or a legal entity without legal personality, is as follows:

- for legal entities:
 - i) the identity of the natural persons who ultimately hold a significant interest;
 - ii) the identity of the natural persons who otherwise exercise control over the legal person, where, after applying point (i), there are doubts on the fact that the person or persons with a controlling interest is or are the beneficial owner or owners, or where no natural person exercises control through a participation;
 - iii) the identity of the natural person who holds the key management position, where no natural person is identified for points i) and ii) above mentioned implementation;
- for legal entities without legal personality:
 - i) the identity of the settlor of the trust (trust operations), the trustee or trustees (agents or administrators), the protector, if any, the beneficiaries or class of beneficiaries and any other natural person ultimately exercising effective control over the trust;
 - ii) the identity of persons holding equivalent or similar positions for other types of legal arrangements.

As part of the verification of the identity of their legal entity customers, subject institutions are required to suspend current business relationships if it turns out that the documents required in paragraph 1 above are falsified.

Article 21 new - Reporting institutions must have adequate risk management systems to determine whether a potential customer or his beneficial owner is a politically exposed person* or if an existing customer or his beneficial owner becomes later a politically exposed person during the business relationship. The status of politically exposed person for the three categories defined in Article 4, point 21 of Act 2018-043 of February 13th 2019 on the fight against money laundering and terrorist financing may be extended after cessation of function or title, on the basis of a risk assessment conducted by the subject institution.

The authorisation of the executive body is required before entering into or continuing a business relationship with a politically exposed person or an existing customer who has become a politically exposed person.

Article 22 new - Reporting institutions must take all reasonable measures* to identify the origin of the assets* and funds of customers and beneficial owners of customers identified as politically exposed persons.

They must apply enhanced due diligence measures with regard to politically exposed persons by carrying out a risk-based assessment of the business relationship, in particular with regard to those holding prominent public functions at national level.

Article 32 new - Special vigilance in identifying the origin and the beneficial owner funds and enhanced vigilance measures

Subject institutions must adopt special vigilance aimed in particular at establishing the origin and the beneficial owner sums in question with respect to:

- all transfers of funds, regardless of the medium for receiving or executing the order or the technical process used;
- all transactions from or to financial institutions which are not subject to obligations at least equivalent to those provided for in this instruction in terms of customer identification or transaction monitoring or which are located in countries which do not apply or insufficiently apply the FATF Recommendations.

Transfers of funds, securities or assets must be carried out in strict compliance with the texts in force and in particular with exchange regulations.

Subject institutions must apply enhanced due diligence measures with regard to transactions made by:

- a Politically Exposed Person (PEP);
- non-profit organizations (NPOs), foundations and non-governmental organisations.

In accordance with the provisions of article 16 point (f) of Law n°2018-043 of February 13th, 2019 on the fight against money laundering and terrorist financing, subject institutions are required to consider the beneficiary of a life insurance contract as a relevant risk factor in determining whether enhanced due diligence measures are applicable.

Where the beneficiary of the life insurance contract is a legal person or a legal entity without legal personality and the subject institution determines that it presents a higher risk, the subject institution shall take additional and enhanced due diligence measures with respect to the business relationship, including appropriate measures to identify and verify the identity of the beneficial owner of the life insurance contract, at the time of the payment of benefits.

Article 34 new – For all transfers, the institutions subject to the originator must obtain and keep the information relating to the originator of the transfer and to the beneficial owners of the transfers, called complete information and listed below, and to verify the accuracy of this information:

- his name;
- his bank account statement;
- and its address.

In accordance with the provisions of article 16 point (d) of law n° 2018-043 of February 13th, 2019, if subject institutions, intermediaries or beneficiaries receive wire transfers that do not contain complete information on the originator, they shall take measures to obtain the missing information from the issuing institution or the beneficiary with a view to complete and verify it.

Subject institutions shall record these arrangements within the policy document in order to decide when to execute, reject or suspend wire transfers not accompanied by the required originator or beneficiary information and the appropriate follow-up actions.

Article 46 new - All documents relating to both national and international transactions, including unsuccessful transactions and those carried out with occasional customers must be kept according to the durations below or longer if required by a competent authority in specific cases and for the fulfilment of their mission:

- for customer identity documents: for at least 5 years after the closure of the account or termination of the relationship;
- for documents relating to transactions carried out by clients and reports on the monitoring of transactions: at least 5 years after execution of the transaction; this information must be sufficiently recorded to enable the transactions to be reconstructed;

- for account books, commercial correspondence with customers and any analysis of customer transactions: at least 5 years after termination of the business relationship.

The probative value of electronic archiving is accepted for the preservation of documents, subject to proof to the contrary from any interested party in the event of a dispute.

Section 2 - Miscellaneous and final provisions

Article 3 - All provisions contrary to this instruction are hereby repealed.

Article 4 - The Chairman of the CSBF is empowered to specify by circular the procedures for applying the provisions of this Instruction.

Article 5 - This Instruction shall enter into force as soon as it is notified to the professional associations of banks, microfinance institutions and electronic money institutions and published on the BFM website.

Done at Antananarivo, on

For the Commission,
THE PRESIDENT,

Aivo H. ANDRIANARIVELO