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**MONEY LAUNDERING AND PROCEEDS
OF CRIME REGULATIONS 2010**

V01

July 12, 2010



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MONEY LAUNDERING AND PROCEEDS OF CRIME REGULATIONS 2010

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SCHEDULE



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MONEY LAUNDERING AND PROCEEDS OF CRIME REGULATIONS 2010

V01

MONEY LAUNDERING AND PROCEEDS OF CRIME ACT 2000

IN EXERCISE of the powers contained in section 80 of the Money laundering and Proceeds of Crime Act 2000, the Attorney General, with the consent of Cabinet, makes the following regulations -

Commencement [Date]

1 Short Title

These Regulations may be cited as the Money Laundering and Proceeds of Crime Regulations 2010.

2 Interpretation

For the purposes of these Regulations:

“CDD” means Risk-Based Customer Due Diligence, and includes:

- (a) identification of customers, including beneficial owners of the formal customer;
- (b) gathering of information on customers to create a customer profile;
- (c) application of acceptance policies to new customers;
- (d) maintenance of customer information on an ongoing basis;

- (e) monitoring of customer transactions; and
- (f) rules on wire transfers and correspondent banking.

“FATF 40” means the Financial Action Task Force 40 Recommendations;

“FATF 9” means the Financial Action Task Force 9 Special Recommendations.

“Act” means the Money Laundering and Proceeds of Crime Act 2000 and its amendments

“Attorney-General” means the Attorney-General appointed pursuant to the Constitution of the Kingdom of Tonga;

“Batch transfers” means a transfer comprised of a number of individual wire transfers that are being sent to the same financial institutions, but may/may not be ultimately intended for different persons.

“Beneficial owners” means the beneficiary as defined in the Trust Act,

“Control” means:

- (a) the power, directly or indirectly, to direct the management or policies of a financial institution or cash dealer; or
- (b) to vote 10% or more of any class of voting shares of a financial institution or cash dealer;

“Cross-border transfer” means any wire transfer where the originator and beneficiary institutions are located in different jurisdictions. This also refers to any chain of wire transfers that has at least one cross-border element;

“Domestic transfers” means any transfer where the originator and beneficiary institutions are located in the same jurisdiction. This refers to any chain of wire transfers that takes place entirely within the borders of a single jurisdiction, even though the system used to effect the wire transfer may be located in another jurisdiction.

“Identify” means to ascertain the full name, address, nationality occupation/business or principal activity.

“Institution affiliated party” means any director, officer, employee or person who:

- (a) owns or controls a financial institution or cash dealer, or
- (b) participates in the conduct of the affairs of a financial institution or cash dealer.

“Intermediary” means a person relied on by a financial institution or cash dealer to perform some of the elements of the CDD process or to introduce business to the financial institution or cash dealer.

“Legal arrangement” refers to express trusts or other similar arrangements.

“Legal persons” refers to bodies corporate, foundations, anstalt, partnerships, or associations, or any similar bodies that can establish a permanent customer relationship with a financial institution or otherwise own property.

“Politically exposed person” means any person who is or has been entrusted with a prominent public function in a foreign country, including, but not limited to Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned companies, and important political party officials. Family members and close associates who have business relationships with such persons are also included herein.

“Regulated institution” means a financial institution or cash dealer as defined in the Act.

“Settlers” means the settler as defined in the Trust Act;

“Shell Bank” means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision.

“Trustee” means a person performing functions under the Trusts Act.

“Wire transfers” means any transaction carried out on behalf of an originator person (both natural and legal) through a financial institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution. The originator and beneficiary may be the same person.

3 Policies and Practices

- (1) Financial institutions shall adopt and implement policies and practices to deter and prevent money laundering and terrorist financing in accordance with these Regulations.
- (2) These include:
 - (a) CDD;
 - (b) record-keeping and retention;
 - (c) reporting of suspicious transactions to the Transaction Reporting Authority; and
 - (d) internal procedures, policies, and controls to ensure compliance with these Regulations.

4 Extraterritorial Application

- (1) Financial institutions shall ensure that the requirements of these Regulations are also applied by branches and subsidiaries located outside of the Kingdom.

- (2) Any local prohibition on the application of these Regulations to such branches or subsidiaries shall be reported to the Transaction Reporting Authority.

PART II – RISK BASED CUSTOMER DUE DILIGENCE

5 Application of CDD

CDD shall be applied on a risk basis, which shall include enhanced CDD for higher risk customers and simplified CDD for lower risk customers.

6 Identification of Customers

- (1) For the purposes of this Regulation “customers” include persons who are (or who seek to be):
 - (a) in a business relationship;
 - (b) engaged in one or more occasional transactions when the total value of the transactions equals or exceeds \$10,000;
 - (c) carrying out wire transfers as provided in Regulation 17; and
 - (d) engaged in any business or transaction in any instance where there is a suspicion that the person is involved in money laundering or terrorist financing with the financial institution.
- (2) Financial institutions shall not keep anonymous accounts or accounts in obviously fictitious names.
- (3) Financial institutions shall ensure that they know the true identity of their customers.
- (4) In order to ensure proper customer identification, the financial institution shall identify and verify the identity of the customer at any time that:
 - (a) the person applies for a business relationship;
 - (b) the person seeks to engage in a threshold occasional transaction;
 - (c) the person seeks to carry out a wire transfer;the person engages in a suspicious activity; and where doubts have arisen as to the veracity or adequacy of previously obtained identification data on the person.
- (5) For customers who are physical persons, the financial institution shall verify identity required using reliable, independent source documents, data, or information as provided in the Schedule to these Regulations.
- (6) For customers who are legal persons or legal arrangements, the financial institution shall obtain and verify:

- (a) the customer's name and legal form, including by obtaining proof of incorporation or similar evidence of establishment or existence;
 - (b) the names and addresses of members of the customer's controlling body;
 - (c) legal provisions that set out the power to bind the customer;
 - (d) legal provisions that authorize persons to act on behalf of the customer; and
 - (e) the identity of the physical person purporting to act on behalf of the customer, using source documents as provided in sub-regulation (4).
- (7) Legible file copies shall be made of the relevant identification.

7 Beneficial Owner

- (1) For the purposes of this regulation "family member" includes brothers and sisters, whether by the whole or half blood, spouse, ancestors, and lineal descendants.
- (2) The financial institution shall take reasonable:
 - (a) measures to determine if a customer is acting on behalf of one or more beneficial owners; and
 - (b) steps to verify the identity of the beneficial owner by using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows the identity of the beneficial owner.
- (3) For life and other investment-linked insurance, the beneficiary under the policy shall be identified and verified.
- (4)
 - (a) No further identification is necessary, for public companies or other legal persons or legal arrangements quoted on an exchange regulated by law, and certain non-resident public companies subject to adequate regulatory disclosure requirements and quoted on a foreign exchange approved for this purpose by the Transaction Reporting Authority that is subject to adequate supervision in a jurisdiction that is implementing effectively the FATF 40 and FATF 9.
 - (b) In determining if there has been effective implementation in the jurisdiction, financial institutions shall take into account the information available on whether these countries adequately apply the FATF 40 and FATF 9, including by examining the reports and reviews prepared by the Financial Action Task Force, International Monetary Fund, and World Bank publications.
- (5) For other customers that are legal persons or legal arrangements, the financial institution shall take reasonable measures to understand the ownership and

control structure of the customer, including the ultimate natural person who owns or controls a legal person, including natural persons with a controlling interest as described in this Article.

- (6) With respect to companies, limited partnerships, or similar arrangements, identification shall be made of each natural person that:
 - (a) owns, directly or indirectly, 25 percent or more of the vote or value of an equity interest; and
 - (b) exercises management of the company, limited partnership or similar arrangement.
- (7) With respect to a trust or similar arrangements, identification shall be made of the settlor, trustee, and beneficiary whose vested interest is 10 percent or more of the value of the trust corpus.
- (8) Identification of other natural persons is not required.
- (9) In determining indirect ownership of equity interests -
 - (a) an equity interest held by a company, limited partnership, or similar arrangement and by a trust shall be considered as being owned proportionately by its shareholders, partners, or vested beneficiaries; and
 - (b) an equity interest held by a family member shall be considered as also being owned, in its entirety, by each family member.
- (10) Legible copies shall be made and retained of the relevant information.

8 Delayed Verification

- (1)
 - (a) Financial institutions may apply to the Transaction Reporting Authority for authorization to delay completion of the customer identification process in Regulations 6 and 7.
 - (b) Permission may be granted by the Transaction Reporting Authority only if the financial institution presents a procedure that complies with these Regulations.
- (2) Financial institutions may delay verification only if verification occurs as soon afterwards as reasonably practical, the delay is essential to not interrupting the normal course of business, and the money laundering and terrorist financing risks are effectively managed.
- (3) Procedures to manage risk concerning delayed customer identification shall include a set of measures such as a limitation of the number, types or amount of transactions that can be performed to enhance the monitoring of transactions under Part IV of these Regulations.

9 Establishment of Customer Profile

- (1) A financial institution shall create a profile for each customer of sufficient detail to enable it to implement the CDD requirements of these Regulations.
- (2) The customer profile shall be based upon sufficient knowledge of the customer, including the customer's proposed business with the financial institution, and where necessary the source of customer funds.

10 Reliance on Intermediaries

- (1)
 - (a) Financial institutions may apply to the Transaction Reporting Authority for authorization to rely on intermediaries such as trust or company service providers to perform the duties in Regulations 6 and 7.
 - (b) Permission will be granted by the Transaction Reporting Authority only if the financial institution presents a plan of internal policies and practices that comply with these Regulations.
- (2) Financial institutions may rely upon intermediaries that are also financial institutions.
- (3)
 - (a) Financial institutions may rely upon non-resident intermediaries if the financial institution is satisfied that the third party is adequately regulated and supervised and has measures in place to comply with the CDD requirements in these Regulations.
 - (b) This requirement will be satisfied if the non-resident intermediary is subject to money laundering and terrorist financing policies comparable with the FATF 40 and FATF 9, is subject to licensing and supervision to enforce those policies, has not been subject to any material disciplinary action that calls into question its execution of those policies, and is located in a jurisdiction that is implementing effectively the FATF 40 and FATF 9.
 - (c) In making this determination, financial institutions shall take into account the information available on application and adequacy of implementation of the FATF 40 and FATF 9 to entities in individual countries.
- (4)
 - (a) In each instance of reliance on intermediaries, the financial institution shall immediately obtain from the third party the information required in Regulations 6 and 7.
 - (b) While it is not necessary to obtain copies of related documents, financial institutions shall take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the information obtained under sub-regulation (3) will be made available without delay.

- (5) Financial institutions may not rely upon intermediaries identified by the Transaction Reporting Authority as non-complying with the FATF 40 and FATF 9, or intermediaries for whom the financial institution has independent credible reason to believe are not complying with the FATF 40 and FATF 9.
- (6)
 - (a) The ultimate responsibility for implementation of the customer due diligence requirements of this Regulation remains with the financial institution.
 - (b) Compliance will be assumed if the financial institution adequately executes the Transaction Reporting Authority approved plan of internal policies and practices that comply with this Regulation.

11 Acceptance of New Customers

- (1) Financial institutions shall not accept as customers those persons whose identity and beneficial owner as required in Regulations 6, 7 and 8 cannot be assured or for whom sufficient information to form a customer profile cannot be gathered and in such cases financial institutions shall determine if they shall file a suspicious transaction report as provided in Part IV.
- (2) It is important that the policy on acceptance of new customers is not so restrictive that it results in a denial of access by the general public to financial services, especially for people who are financially or socially disadvantaged.

12 Customer Information

- (1) Financial institutions shall gather and maintain customer information on an ongoing basis.
- (2) Documents, data, or information collected under the CDD process shall be kept up to date and relevant by taking reviews of existing records at appropriate times.

13 Monitoring of Customer Transactions

- (1) Financial institutions shall monitor ongoing customer transactions.
- (2) Monitoring shall include the scrutiny of customer transactions to ensure that they are being conducted according to the financial institution's knowledge of the customer and the customer profile and, where necessary, the source of funds, and may include predetermined limits on amount of transactions and type of transactions.
- (3) Financial institutions shall:

- (a) pay special attention to all complex, unusual large transactions, or unusual pattern of transactions that have no visible economic or lawful purpose;
- (b) examine as far as possible the background and purpose of such transactions and set forth their findings in writing;
- (c) keep such findings available for examination by the Transaction Reporting Authority, auditors, and any other competent authorities, for a minimum of five years; and
- (d) in such cases, determine if they shall file a suspicious transaction report as provided in Part IV.

14 Termination of Customer Relationship

If the financial institution is unable to comply with the CDD required for a customer it shall terminate the customer relationship and determine if it shall file a suspicious transaction report as provided in Part IV.

15 Enhanced CDD

- (1) For the purposes of this Regulation, “politically exposed person” means any person who is or has been entrusted with a prominent public function in a foreign country, including, but not limited to Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned companies, and important political party officials.
- (2) Financial institutions shall apply enhanced CDD for customers that are likely to pose a higher risk of money laundering or terrorist financing including “politically exposed persons” and family members and close associates who have business relationships with such persons are also included herein.
- (3) Enhanced CDD shall:
 - (a) include reasonable measures to establish the source of wealth and source of funds of customers; and
 - (b) be applied to higher risk customers at each stage of the CDD process.
- (4) No higher risk customer shall be accepted as a customer unless a senior member of the financial institution’s management has agreed.

16 Simplified CDD

- (1) (a) Financial institutions may apply to the Transaction Reporting Authority for authorization to apply a simplified customer due diligence procedure.

- (b) Permission will be granted by the Transaction Reporting Authority only if the financial institution presents a procedure that complies with this Regulation.
- (2) The general rule is that customers shall be subject to the full range of customer due diligence measures as provided in this Regulation.
- (3) In certain circumstances where—
 - (a) the risk of money laundering or terrorist financing is lower;
 - (b) information on the identity of the customer and the beneficial owner of a customer is publicly available; or
 - (c) adequate checks and controls exist elsewhere in national systems;simplified measures may be employed.

17 Wire Transfers

- (1) Financial institutions shall ensure, that for all wire transfers, ordering persons obtain and maintain full originator information and to verify that the information is accurate and meaningful.
- (2) Full originator information includes:
 - (a) the name of the originator;
 - (b) the originator's account number (or a unique reference number if there is no account number); and
 - (c) the originator's identification card number or address.
- (3) For cross-border wire transfers, including batch transfers and transactions using a credit or debit card to effect a funds transfer, the ordering financial institution shall be required to include full originator information in the message or payment form accompanying the wire transfer, except in the circumstances provided in this Regulation for batch transfers.
- (4) For domestic wire transfers (including transactions using a credit or debit card as a payment system to effect a money transfer), the ordering financial institution shall include either:
 - (a) full originator information in the message or payment form accompanying the wire transfer; or
 - (b) only the originator's account number or, where no account number exists, a unique identifier, within the message or payment form.
- (5) Sub-regulation (4)(b) may be used only if full originator information can be made available to the beneficiary, financial institution and the Transaction Reporting Authority within three business days of receiving a request.

- (6) If a cross-border wire transfer is contained within a batch transfer and is sent by a financial institution, it may be treated as a domestic wire transfer provided the requirements for domestic wire transfers are met.
- (7) The financial institution shall ensure that non-routine transactions are not batched where this would increase the risk of money laundering or terrorist financing.
- (8) Each intermediary in the payment chain shall maintain all the required originator information with the accompanying wire transfer.
- (9)
 - (a) Financial institutions may apply to the Transaction Reporting Authority for authorization to exempt wire transfers below \$3000 from the requirements of sub-regulations (3) and (4).
 - (b) Permission will be granted by the Transaction Reporting Authority only if the financial institution presents a procedure that complies with this Regulation.
- (10)
 - (a) Beneficiary financial institutions shall identify and handle wire transfers that are not accompanied by complete originator information on the basis of perceived risk of money laundering and terrorist financing.
 - (b) Procedures to address these cases shall include the financial institution first requesting the missing originator information from the financial institution that sent the wire transfer.
 - (c) If the missing information is not forthcoming, the financial institution shall consider whether, in all the circumstances, the absence of complete originator information creates or contributes to suspicion about the wire transfer or a related transaction.
 - (d) If the wire transfer is deemed to be suspicious, then it shall be reported to the Transaction Reporting Authority under Part IV.
 - (e) In addition, the financial institution may decide not to accept the wire transfer.
 - (f) In appropriate circumstances, beneficiary financial institutions shall consider restricting or terminating business relationships with financial institutions that do not comply with this Regulation.

18 Cross Border Correspondent Banking

- (1) For the purposes of this Regulation “correspondent banking” means the provision by one bank to another bank of credit, deposit, collection, clearing or payment services.
- (2)
 - (a) Banks shall develop and implement policies and procedures concerning correspondent banking.

- (b) In order to provide correspondent banking services, a bank shall first assess the respondent's controls against money laundering and terrorist financing and determine that they are adequate and effective.
 - (c) Banks shall gather sufficient information about respondent banks to understand their business and determine from publicly available information the reputation of the institution, quality of supervision, and whether it has been subject to a money laundering or terrorism financing investigation or regulatory action.
 - (d) A bank shall in general establish or continue a correspondent relationship with a foreign bank only if it is satisfied that the bank is effectively supervised by the relevant authority.
 - (e) A bank shall not establish or continue a correspondent banking relationship with a bank incorporated in a jurisdiction in which the bank has no presence and which is unaffiliated with a regulated financial group.
 - (f) A bank shall not enter into a correspondent banking relationship without first seeking the prior approval of the Transaction Reporting Authority.
- (3) The information to be collected under sub regulation (2)(c) may include, but is not limited to:
- (a) details about the respondent bank's management;
 - (b) major business activities, where it is located;
 - (c) its money laundering and terrorist financing prevention efforts;
 - (d) the system of bank regulation and supervision in the respondent bank's country; and
 - (e) purpose of the account.
- (4) (a) A bank shall pay particular attention when maintaining a correspondent banking relationship with banks incorporated in jurisdictions that do not meet international standards for the prevention of money laundering and terrorist financing.
- (b) Enhanced due diligence will generally be required in such cases, including obtaining details of the beneficial ownership of such banks and more extensive information about their policies and procedures to prevent money laundering and terrorist financing.
- (5) A bank shall develop and implement policies and procedures concerning the ongoing monitoring of activities conducted through such correspondent accounts.
- (6) (a) Particular care shall also be exercised where the bank's respondent allows direct use of the correspondent account by third parties to transact business on their own behalf.

- (b) A bank shall be satisfied that the respondent bank has performed the customer due diligence required in the Regulations for those customers that have direct access to the accounts of the correspondent, and that the respondent is able to provide relevant customer identification information on request of the correspondent.

PART III – RECORD KEEPING AND RETENTION

19 Transaction Records

- (1) (a) Financial institutions shall ensure that all necessary records on transactions, both domestic and international, are retained for at least seven years following completion of the transaction, or longer if requested by a competent authority in specific cases and upon proper authority.
- (b) This requirement applies regardless of whether the account or business relationship is ongoing or has been terminated.
- (2) Transaction records shall be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.
- (3) Necessary components of transaction records include:
 - (a) customer's and beneficiary's name, address or other identifying information normally recorded by the intermediary;
 - (b) the nature and date of the transaction;
 - (c) the type and amount of currency involved; and
 - (d) the type and identifying number of any account involved in the transaction.

21 Other Records and Data

- (1) Financial institutions shall ensure that all necessary records on the identification data, account files and business correspondence for at least seven years are kept, following the termination of an account or business relationship, or longer if requested by a competent authority in specific cases upon proper authority.
- (2) All customer and transaction records and information shall be made available on a timely basis to the Transaction Reporting Authority and other domestic competent authorities upon request by the appropriate authority.

PART IV – SUSPICIOUS TRANSACTION REPORTS

22 Reporting Suspicious Funds or Transactions

- (1) Financial institutions shall report to the Transaction Reporting Authority when the entity suspects or has reasonable grounds to suspect that funds are:
 - (a) related to money laundering, terrorist financing, a serious offence or the proceeds of a criminal offence including tax matters; or
 - (b) linked or related to, or to be used for terrorism, terrorist acts, by an individual terrorist, terrorist organizations or terrorist financing;
- (2)
 - (a) All suspicious funds and transactions, including attempted transactions, shall be reported.
 - (b) The requirement to report is not otherwise limited.
- (3) Suspicious Transaction Reports shall:
 - (a) be submitted as soon as possible but no later than three working days after forming that suspicion and wherever possible before the transaction is carried out; and
 - (b) contain all relevant information concerning the funds or transaction in accordance with the Schedule to these Regulations.
- (4)
 - (a) Financial institutions shall pay special attention to all complex, unusual large transactions, or unusual pattern of transactions that have no visible economic or lawful purpose.
 - (b) Financial institutions may examine as far as possible the background and purpose of such transactions and set forth their findings in writing.
 - (c) Financial institutions must keep such findings available for examination by the Transaction Reporting Authority, auditors, and any other competent authorities, for a minimum of six years.
 - (d) In such cases, financial institutions should determine if they should file a suspicious activity report.

23 Prohibition on Tipping Off

Financial institutions, their directors, officers and employees, permanent and temporary, shall not disclose that a Suspicious Transaction Report or related information is being reported or provided to the Transaction Reporting Authority.

24 Currency Transaction Reporting

- (1) Every financial institution shall obtain the requisite information and file with the Transaction Reporting Authority reports of transactions in currency to the extent and in the manner herein required.
- (2) For the purposes of obtaining, information and reporting under this regulation, a transaction in currency is:

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- (a) a deposit, withdrawal, exchange of currency, or other payment or transfer;
 - (b) involving currency of any country of a value greater than \$10,000:
 - (i) in a single transaction; or
 - (ii) in multiple transactions taken by or on behalf of a single person within a 24 hour period when aggregated.
 - (3) Prior to concluding any transaction in currency all financial institutions shall obtain and verify the following information:
 - (a) the name, address, citizenship/residency status, social security number or passport number and occupation/business or principal activity of each person conducting or involved in a transaction or on whose behalf a transaction is conducted;
 - (b) the nature and date of the transaction;
 - (c) the type and identification numbers of all accounts involved;
 - (d) the type and amount of currency involved, and
 - (e) name(s) of officers, employees and agent(s) and method(s) used to verify the information required by this subsection (c).
 - (4) Financial institutions shall satisfy their requirement to verify information required by subsection (c) records by obtaining from and examining:
 - (a) from individuals - original official unexpired documents bearing a photograph or reasonable alternative;
 - (b) articles of incorporation, charters, or their equivalents, or any other official documentation establishing that it has been lawfully registered and is in existence at the time of identification and which delineates the powers of their legal representatives; and
 - (c) the appropriate documentation for all persons acting, or appearing to act in a representative capacity including all the beneficiaries.
 - (5) Financial institutions shall comply with the following procedures –
 - (a) Information regarding transactions in currency not otherwise exempted pursuant to subsection (g) and (h) of this regulation shall be reported by completing a Currency Transaction Report form (CTR) pursuant to the CTR's instructions, and collecting and maintaining supporting documentation as required by paragraph (c) of this regulation.
 - (b) The CTR shall be filed with the Transaction Reporting Authority, as indicated in the instructions to the CTR.
 - (c) The CTR shall be filed no later than ten (10) working days after the date of transaction in currency.
 - (6) A financial institution shall maintain a copy of any CTR filed and the original or a microfilm, electronic or other copy or reproduction, or business record

equivalent of any supporting documentation of a CTR for a period of six years from the date of filing the CTR. Supporting documentation shall be identified, and maintained by the financial institution as such, and shall be deemed to have been filed with the CTR. A financial institution shall make all supporting documentation available to the Transaction Reporting Authority and any appropriate law enforcement agencies upon request.

- (7) A transaction to which a financial institution is party is also eligible for exemption if:
 - (a) the other party to the transaction is a government agency of Tonga; and
 - (b) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the lawful business activities of that agency.
- (8) A transaction is eligible for exemption if the transaction is between a financial institution and another financial institution; or
- (9) A transaction is also eligible for exemption if:
 - (a) the transaction is between a financial institution and another person (in this subsection called the “customer”);
 - (b) the customer has had, at the time when the transaction takes place, an account verified pursuant to Section 3 with the financial institution for one year;
 - (c) the transaction consists of a deposit into, or a withdrawal from, an account maintained by the customer with the financial institution;
 - (d) the transaction does not involve any party representing anyone in a representative capacity;
 - (e) the customer carries on a commercial enterprise (other than business that includes the selling of vehicles, vessels, aircraft, real estate brokerage, mobile home dealers, accountants, lawyers, doctors, pawnbrokers, title insurance/closing companies, trade unions, and auctioneers);
 - (f) the account is maintained for the purposes of that business; and
 - (g) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.
- (10) A transaction is also eligible for exemption if:
 - (a) the transaction is between a financial institution and another person (in this subsection called the “customer”);
 - (b) the customer has had, at the time when the transaction takes place, an account verified pursuant to these regulations with the financial institution for at least one year;

- (c) the transaction consists of a withdrawal from an account maintained by the customer with the financial institution;
 - (d) the withdrawal is made for payroll purposes;
 - (e) the customer regularly withdraws, from the account, currency of a value not less than \$10,000 to pay the customer's staff and employees; and
 - (f) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.
- (11) A record of each exemption granted under this regulation and the reason therefore must be kept by a financial institution in an exemption registry.
- (12) For an exempted transaction between a financial institution and a government agency of Tonga under subsection (g)(1) and (2), the exemption registry should include the reason for the exemption and the names and addresses of the financial institution or cash dealer and/or government agencies involved in the transaction.
- (13) For exempted transactions between a financial institution and a customer, as defined in (g) (3) and (4), the exemption registry must include the following information:
- (a) the reason for exemption;
 - (b) the customer's name, business or residential address, and his/her occupation, business or principal activity;
 - (c) a statement whether the exemption covers deposits, withdrawals or both;
 - (d) a signed statement by the customer that states the following:
 - (i) the party believes that the transaction is eligible for exemption under Section 6(g), and
 - (ii) the information provided by the party to the institution in relation to the transaction is, to the best of his or knowledge and belief, true and correct;
 - (e) the name and title of the person making the decision to grant the exemption; and
 - (f) any other information mandated by the Transaction Reporting Authority.
- (14) An exemption can apply to a class of transactions between a financial institution and eligible parties designated under subsection (g). For class transactions, the exemption registry must also include in, addition to the requirements of Section 22(h) (1) and (2), the following:
- (a) the range of the amounts of currency involved in the class of transactions;

- (b) the range amount of the class of transactions;
- (c) the period during which the class of transactions is to be exempt; and
- (d) any other information mandated by the Transaction Reporting Authority.

(15) Financial institution or cash dealer must monitor the exemptions they have granted on a continual basis. A change in circumstances may warrant removal from the registry or require amending the exemption record in the registry. In addition to monitoring, each financial institution must commission an annual review of its exemption registry. A financial institution must contact each customer who has an exemption to determine whether there is a change in the customer's situation since the last date of review.

(16) The Transaction Reporting Authority has the right to review the exemption registry at any time. The Transaction Reporting Authority may, by appropriate order, direct the deletion of any exemption

PART V – INTERNAL PROCEDURES, POLICIES AND CONTROLS

25 Internal Procedures, Policies and Controls

- (1)
 - (a) Financial institutions shall adopt and implement internal procedures, policies, and controls to ensure compliance with this Regulation.
 - (b) At a minimum, this shall include management arrangements to implement the regulations, including the designation of a compliance officer at the management level.
 - (c) The compliance officer and other appropriate staff shall have timely access to customer identification data and other CDD information, transaction records, and other relevant information.
 - (d) The compliance officer shall have the authority to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors or equivalent body.
- (2) Financial institutions shall:
 - (a) acquaint themselves with relevant information on the prevention of money laundering and terrorist financing;
 - (b) maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls;
 - (c) establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current money laundering and terrorist financing techniques, methods and trends and that there is a clear explanation of all aspects of money

laundering and terrorist financing laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting; and

- (d) establish screening procedures to ensure appropriate standards when hiring employees.

26 Non face-to-face transactions and new technologies

Financial Institutions are required to have policies in place and take such measures as are needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes

27 Branches and subsidiaries

- (1) Financial institutions shall ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements in Tonga and the FATF Recommendations.
- (2) Financial institutions must pay particular attention to this principle with respect to branches and subsidiaries in countries that do not or insufficiently apply the FATF Recommendations
- (3) Where the minimum Anti-Money Laundering and Counter Financing of Terrorism requirements of Tonga and the host country differ, branches and subsidiaries in host countries must apply the higher standard to the extent that the host country laws and regulations permit
- (4) Financial institutions must inform the Transaction Reporting Authority when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by host country laws, regulations or other measures.

Made at Nukualofa this

day of

2010

Attorney General

SCHEDULE

(Regulation 6(5), 21(3)(b))

Part A: Delayed Verification

- 1 Examples of situations where it may be essential not to interrupt the course of the normal conduct of business are:
- (a) non face-to-face business;
 - (b) securities transactions; and
 - (c) life insurance in relation to identification and verification of the beneficiary under the policy, which may take place after the business relationship with the policyholder is established, but in all such cases, identification and verification shall occur at or before the time of payout or the time when the beneficiary intends to exercise vested rights under the policy.

Part B: Enhanced CDD for Higher Risk Customers

- 2 Relevant factors in determining if a customer is higher risk include if the person is:
- (a) establishing customer relations other than “face to face”;
 - (b) a non-resident, or if the nationality, current residency, and previous residency of the person suggests greater risk of money laundering or terrorist financing;
 - (c) connected with jurisdictions that lack proper standards in the prevention of money laundering or terrorist financing;
 - (d) a politically exposed person or linked to a politically exposed person;
 - (e) a high net worth individual, especially if the potential customer is a private banking customer or the source of funds is unclear;
 - (f) engaged in a business that is particularly susceptible to money laundering or terrorism financing;
 - (g) a legal person or arrangement that is a personal asset holding vehicle;
 - (h) a legal person or arrangement whose ownership structure is complex for no good reason;
 - (i) a company with nominee shareholders or shares in bearer form; and
 - (j) higher risk for other reasons based on relevant information.
- 3 Non-face to face transactions include but are not limited to:

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- (a) business relationships concluded over the internet or by other means such as through the post;
 - (b) services and transactions over the internet including trading in securities by retail investors over the internet or other interactive computer services;
 - (c) use of Automated Teller Machines;
 - (d) telephone banking;
 - (e) transmission of instructions or applications via facsimile or similar means; and
 - (f) making payments and receiving cash withdrawals as part of electronic point of sale transaction using prepaid or re-loadable or account-linked value cards.
- 4 Enhanced CDD procedures for non-face to face transactions may include:
- (a) certification of documents presented;
 - (b) requisition of additional documents to complement those that are required for face to face customers; and
 - (c) development of independent contact with the customer.
- 5 Procedures for determining who is a politically exposed persons may include:
- (a) seeking relevant information from the potential customer;
 - (b) referring to publicly available information; and
 - (c) making access to commercial electronic databases of politically exposed persons.
- 6 In applying enhanced CDD, financial institutions shall take care not to engage in unlawful discrimination on the basis of race, colour, religion, or national origin.

Part C: Simplified CDD for Lower Risk Customers

- 7 Examples of customers, transactions, or products where the risk may be lower include:
- (a) other financial institutions;
 - (b) non-resident financial institutions that are subject to adequate regulation and supervision as limited by Regulation 16;
 - (c) public companies, other legal persons or legal arrangements quoted on an exchange regulated by the Transaction Reporting Authority, and certain

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- public companies quoted on a foreign exchange approved for this purpose by the Transaction Reporting Authority that is subject to adequate supervision and providing the company is subject to adequate regulatory disclosure requirements;
- (d) domestic government administrations or enterprises, and certain foreign government administrations or enterprises;
 - (e) life insurance policies where the annual premium is no more than \$1,000 or a single premium of no more than \$2,500;
 - (f) insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;
 - (g) pension, superannuation, or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme;
 - (h) beneficial owners of non-resident pooled accounts, provided they are subject to adequate regulation and supervision; and
 - (i) small scale accounts and micro-credit accounts with an annual turnover of under \$200.
- 8 (a) Non-resident and foreign entities described in 1(b), (c), (d), and (h) may only qualify for reduced CDD if they are located in a jurisdiction that is implementing effectively the FATF 40 and FATF 9.
- (b) In making this determination, financial institutions shall take into account the information available on whether these countries adequately apply the FATF 40 and FATF 9, including by examining the approved list provided by the Transaction Reporting Authority and reports, assessments, and reviews published by FATF, International Monetary Fund, and World Bank publications.
- 9 Simplified CDD measures are not acceptable whenever a customer has been identified by the Transaction Reporting Authority as non-complying with the FATF 40 and FATF 9, or for which the financial institution has independent credible reason to believe are not complying with the FATF 40 and FATF 9, or for any reason that there is suspicion of money laundering or terrorist financing or specific higher risk scenarios apply.