

Ministerial Order 7/2001

MINISTERIAL ORDER NO. 7 OF 2001 WITH RESPECT TO THE OBLIGATIONS GOVERNING INSTITUTIONS CONCERNING THE PROHIBITION AND COMBATING OF MONEY LAUNDERING

The Minister of Finance & National Economy:

Having examined Legislative Decree No. 4 of 2001 with respect to the Prohibition and Combating of Money Laundering, particularly Article (4) therein; and
Ministerial Order No. 5 of 2001 with respect to the Formation of a Committee to Draw up Policies for the Prohibition and Combating of Money Laundering; and

Upon the submission of the Undersecretary of the Ministry of Finance & National Economy,
HEREBY ORDERS:

Article 1 Definitions

In the application of the provisions of this Order and unless the context otherwise requires and without prejudice to the definitions provided for in Legislative Decree No. 4 of 2001, the following words and expression shall have the meanings given to each:

"Committee"

means the "Committee for drawing up the Policies for the Prohibition and Combating of Money Laundering";

"Customer"

means any natural person or corporate entity wishing to establish a business relationship with one of the institutions provided for in the Schedule to Legislative Decree No.4 of 2001 or entering into a separate transaction therewith;

"Business Relationship"

means the continuous arrangements between two or more parties in which one of the parties undertakes the facilitation of executing regular, or frequent transactions between them, or in which the value of deals are not known when opening a bank account, or upon entering into a contract which requires the verification thereof;

"Separate Transaction"

means any transaction made outside the scope of the business relationship;

"Separate Significant Transaction"

means any transaction with a value of more than BD10,000 or equivalent thereof in other currencies whether completed in one deal or in a number of linked deals.

"Suspicious or Extraordinary Transactions"

mean any transactions that are not consistent with the customer's familiar activities, or the type of account opened and which are considered by the institution, by virtue of its experience and in its proper discretion, as suspicious or extraordinary transactions; and

"Minimum Safekeeping Period"

means a period of five years, to be calculated from the date of one of the following events:

1. the last transaction of the bank account or its closure;
2. a Lessee dispensing with the safe deposit box leased to him in a bank;
3. the termination of banking transactions; or
4. any other dealings.

Article 2

Obligations Governing Institutions

1. Institutions shall apply all the procedures and policies provided for in Legislative Decree No.4 of 2001 as well as those to be laid down by the Committee to ensure that the transactions of such institutions are not exploited for money laundering purposes. Such procedures and policies shall fulfil the requirements provided for as follows:
2. It shall be prohibited for an institution to establish a business relationship or to carry out a separate transaction with any person unless the following procedures are carried out:
 - a) the procedures required for establishing the customer's identity, maintaining records and internal control as provided for in Articles 4, 5 and 6 herein; and
 - b) any other appropriate procedures for prohibiting and combating money laundering.
3. An institution shall take the appropriate measures for obliging its employees to comply with the procedures provided for in Article 2.2 herein and the provisions of Legislative Decree No.4 of 2001.
4. An institution shall set aside transferred funds in an escrow account until it is ascertained that such funds are not linked to suspicious or extraordinary transactions by contacting the customer and requesting him to submit documents and justifications supporting the legality of such funds, Provided That, the amounts so set aside shall be transferred to the customer's account when the institution confirms that they are not linked to suspicious or extraordinary transactions.
5. An institution shall exercise special care in dealing with all types of transactions and deals. It shall examine the background and objects of such transactions and deals and shall seek to keep a written record of the results reached. Then, a report concerning them shall be referred to the concerned authorities.
6. An institution shall oblige its overseas branches to apply the provisions of this Order to the extent permitted by the applicable laws and regulations in the states where they operate, especially if such branches are in countries which do not comply with this particular Order or where their compliance is inadequate. Further, an institution shall inform the concerned authorities whether the laws of the countries, where such branches operate, obstruct the application of the provisions of this Order.

Article 3

Training Requirements

Institutions shall prepare regular and continuous training programmes for the concerned employees especially in the following areas:

1. Laws related to the prohibition and combating of money laundering,
2. Institutions' policies and regulations in the field of prohibiting and combating money laundering.
3. New developments in the area of money laundering and other suspicious activities and ways of identifying such activities, so as to improve staff efficiency by mating staff acquainted with such activities, their typology and how to counter them.
4. Personal responsibility of each employee according to the relevant laws.

Article 4

Identification Procedures

1. Each institution shall verify a customer's identity and the source of his funds by all methods of proof and shall ensure that no accounts shall be opened anonymously, by false names or be related to funds of an unknown or suspicious nature.
2. Each institution shall lay down the appropriate procedures that oblige each customer who wishes to establish a business relationship or separate transaction or transactions therewith for an amount in excess of **BD10,000** to prove his identity and to provide sufficient evidence of the source of the funds.
3. Without prejudice to the provisions of Article 6 herein, an institution shall refuse to do business with any customer who is unable to prove his identity or the source of his funds.
4. Proof of identity or source of funds shall be sufficient if the proof can:
 - a) establish the customer's identity and persuade the concerned employee thereof and that the source of funds is as claimed by the customer; and
 - b) determine the customer's business address or normal residence address, date of birth and nationality.
5. The following factors shall be taken into account for assessment of adequacy of evidence:
 - a) nature of business;
 - b) customer's geographical location;
 - c) possibility of obtaining tangible evidence before entering into a contract or transfer of funds; and
 - d) initial stages of suspecting that the funds relate to a separate significant transaction or more.
6. If the customer is an agent of a business or firm subject to the supervision of a controlling authority and resides in a country that has similar laws for prohibition and combating money of laundering, it may be sufficient evidence to receive written confirmation from the customer of the availability of proof of the principal's identity, its registration and maintenance thereof.
7. Procedures for proving a customer's identity and sources of funds indicated in this Order shall not be applicable in the following cases:
 - a) if the customer is an organisation affiliated to or under the supervision of the Ministry of Commerce & Industry, the Bahrain Stock Exchange, the Ministry of Justice & Islamic Affairs, or if it is a company in which the Government has a majority stake, or if it is a company incorporated by virtue of a law or decree;
 - b) if the subject-matter of the transaction is payment of sums by the customer or on his behalf in any manner by or on his behalf through another organisation;
 - c) if a separate significant transaction takes place with or for the account of a third party with the intervention of a person who is subject to a supervisory authority who has provided confirmation that the identity of the third party has been established and registered according to the custody procedures for such person; and
 - d) if the customer purchases a stake in a collective investment venture.
8. The provisions of the Article 4.7 herein shall not be applicable if the person in charge believes or has reason to believe that the customer is involved in money laundering or that the transaction is executed in favour of another person involved in money laundering.
9. All institutions shall report to the Anti Money Laundering Unit any suspicious or extraordinary transactions regardless of the value of amounts subject to the transaction.
10. When an institution is merged with another institution, the merged institution shall not be required to provide proof of the identities of the customers of the institution to merge therewith according to the provisions of this Order if:
 - a) the merged institution has applied the safekeeping procedures provided for in Articles 5.1, 5.2 and 5.3 herein; and
 - b) proper investigations have not resulted in any suspicions about compliance of the procedures followed by the merged institutions with the requirements of Legislative Decree No.4 of 2001.
11. If an institution suspects the information in respect to the customer's identity is false or if he deals in his capacity as principal or agent, it shall adopt the appropriate measures to ascertain the identity of such person.
12. If the customer is a lawyer, accountant or a holder of a general power of attorney or authorised agent acting as a financial broker then he shall not be able to plead professional confidentiality as a reason for not disclosing the true identity of the beneficial owner.

Article 5

Procedures for Record Keeping

1. Upon completing any transaction, an institution shall keep for the period prescribed in Article 5 (a) of Legislative Decree No.4 of 2001 an original copy of the proof of the customer's identity and every document related to the transactions that it conducts.
2. The institution shall maintain a register containing all details of transactions conducted thereby to ascertain the following:
 - a) fulfilment of the requirements of the Legislative Decree No.4 of 2001.
 - b) to enable the Anti Money Laundering Unit to follow up every transaction and the institution's compliance with the duties provided for in this Order,
 - c) the possibility of restructuring the transaction;
 - d) the possibility of answering, within a reasonable period of time, any inquiries requested by the Anti Money Laundering Unit with the implementation of any orders issued with respect to disclosure of transactions including the identity of the owner of funds or beneficiary thereof and the monetary transactions conducted by the institutions requiring proof of identity; and
 - e) the availability of all the other documents and records required for the transactions referred to in Article 2 herein.
3. When an institution is required by Legislative Decree No.4 of 2001 to deliver the original copy of a record of a transaction or one of its documents before the expiry of the safekeeping period, the institution shall:
 - a) maintain a copy of all the documents until the expiry of the safekeeping period or returning the original copies, whichever is earlier.
 - b) maintain a record of the documents that have been delivered.
4. Subject to the provisions of Article 5.1 herein if the matter relates to investigations conducted by the Anti Money Laundering Unit, the Register of Transactions or any other documents shall be maintained after the expiry of the prescribed safekeeping period until an order is issued for destruction thereof by the Anti Money Laundering Unit.

Article 6

Internal Reporting Procedures:

Each institution shall introduce clear internal reporting procedures including the following:

- a) Appointment of an officer in charge of reporting.
- b) Obliging the officer in charge to submit a report to the officer in charge of reporting once there is information or suspicions about the involvement of a customer in a money laundering crime.
- c) Obliging the officer in charge of reporting or whomsoever deputizes for him to review the incoming reports in view of the relevant information to ascertain the seriousness of money laundering information or suspicions.
- d) Enabling the officer in charge of reporting or whomsoever deputizes for him to obtain any other available information to facilitate his duties.
- e) Ensuring that a report is made to the Anti Money Laundering Unit and other concerned authorities of the report's contents once the officer in charge or whoever deputizes for him becomes aware thereof or believes that a person has become involved in a money laundering crime.

Article 7

Confidentiality Duty

Reporting to the Anti Money Laundering Unit or Public Prosecutor in pursuance of this Order shall not be deemed a breach of any restriction imposed by Law.

Article 8
Communication with the Anti Money Laundering Unit

1. Communication between institutions and the Anti Money Laundering Unit in respect of all matters relating to money laundering shall take place through the institutions reporting officer or whoever acts on his behalf. Correspondence shall be addressed to the Anti Money Laundering Unit.
2. An institution shall be prohibited from communicating with the concerned customer or any other person with respect to money laundering except with the prior permission of the Anti Money Laundering Unit. The institution shall comply with the directives issued by the Anti Money Laundering Unit in this respect.

Article 9
Penalties for Violating the Provisions of this Order

Every person who violates the provisions of this Order shall be liable as per the penalties set out in Article 3.5 Legislative Decree No.4 of 2001.

Article 10

The Undersecretary of the Ministry of Finance and National Economy shall implement this Order, which shall come into effect from the 5th of December 2001 being the date of its publication in the Official Gazette.

Signed: Abdulla Hasan Saif Minister of Finance & National Economy

Issued on the 11th day of Ramadhan, 1422 Hijra

Corresponding to the 26th day of November 2001 A.D.