

TRANSLATION

Republic of Panama Superintendency of Banks

RULE No. 7-2016
(dated 4 October 2016)

“Whereby guidelines are established for the prevention of money laundering, the financing of terrorism, and the financing of the proliferation of weapons of mass destruction that may arise from cross-border correspondent banking relationships provided by correspondent banks in the Panamanian market”

THE BOARD OF DIRECTORS
in use of its legal powers and,

WHEREAS:

Due to the issuance of Decree Law 2 dated 22 February 2008, the Executive Branch reedited Decree Law 9 dated 28 February 1998 and all of its amendments as a consolidated text, and this text was approved by means of Executive Decree 52 dated 30 April 2008, hereinafter referred to as the Banking Law;

Pursuant to paragraph 1 of Article 5 of the Banking Law, safeguarding the soundness and efficiency of the banking system is one of the objectives of the Superintendency of Banks;

Pursuant to paragraph 2 of Article 5 of the Banking Law, strengthening and fostering favorable conditions for the development of the Republic of Panama as an international financial sector is one of the objectives of the Superintendency of Banks;

Article 112 of the Banking Law establishes that banks and other entities supervised by the Superintendency are required to establish policies and procedures and the internal control structures to prevent their services being used improperly for the crime of money laundering, the financing of terrorism or other crimes that are related or similar in nature or origin;

Financial Action Task Force's (FATF) Recommendation 13, adopted on February 2012, established, among other standards, the minimum requirements financial institutions must apply to cross-border correspondent banking and other similar relationships, in addition to performing normal customer due diligence measures to mitigate risks inherent in those relationships;

Article 19 of Law 23 of 2015, whereby measures were adopted for preventing money laundering, the financing of terrorism, and financing the proliferation of weapons of mass destruction, designated the Superintendency of Banks, among others, as a supervisory body for this matter;

Paragraph 7 of Article 20 of Law 23 of 2015 establishes that issuing guidance on standards and feedback to the financial reporting entities, the nonfinancial reporting entities and activities performed by professionals subject to supervision on enforcement, as well as the procedures for the identification of the final beneficiaries of legal entities and other legal structures, are attributes of the supervisory organizations;

Pursuant to Article 22 of Law 23 of 2015 the Superintendency of Banks is responsible for supervising banks and other reporting financial entities on matters related to the prevention of money laundering;

In accordance with Article 33 of Law 23 of 2015, reporting financial entities shall maintain due diligence measures enabling them to know the financial institutions to whom they offer and from whom they receive correspondent services, in order to prevent these from becoming a vehicle for the crimes of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction;

Rule 10-2015 dated 27 July 2015 establishes the measures for preventing the misuse of banking and trust services;

TRANSLATION

Articles 7 and 8 of Rule 10-2015 establish the basic parameters banks must apply to transactions and operations resulting from interbank or correspondent banking relationships, in accordance with the risk level they pose. These articles also stipulate the due diligence measures banks must plan for in establishing or maintaining interbank relationships;

During its working sessions, the Board of Directors determined it necessary and advisable to provide guidelines for the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction that may arise from cross-border correspondent banking relations, in order to establish criteria for improving the effectiveness and efficiency of the current prevention regime based on international standards and best practices on the matter.

RESOLVES:

ARTICLE 1. SCOPE OF APPLICATION. The provisions contained herein will be applicable to state-own banks, general license banks and international license banks providing cross-border correspondent banking services to financial institutions.

ARTICLE 2. DEFINITIONS. For the purposes of this Rule, the following terms will be understood as:

- 1. Correspondent relationship:** A contractual relationship between two financial entities permitting cross-border correspondent services, including, without limitation, the movement of funds and the access to financial services in different currencies and foreign jurisdictions. It consists of the provision of banking services given by a bank (correspondent bank) to another bank (respondent bank/client);
- 2. Correspondent bank:** A bank established in the Panamanian market, acting as the agent for other banks established in other markets, and to which certain operations are entrusted in representation of the sender or the respondent bank;
- 3. Client/Respondent bank:** A bank located in a foreign market, which, within the correspondent banking relationship, is a client receiving a service provided by the correspondent bank located in the Panamanian market;
- 4. Shell bank:** A bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regular financial group that is subject to effective consolidated supervision. *Physical presence* means that the head and senior management is located within a country. The existence of a local agent or low level staff does not constitute physical presence.
- 5. Payment transfer accounts in other markets:** An account in correspondent banks directly used by third parties to conduct transactions on their own behalf.

ARTICLE 3. CORRESPONDENT RELATIONSHIPS. The banks established in Panama under the regulation and supervision of the Superintendency providing correspondent services to banks located in foreign markets should have full knowledge of the client/respondent bank's nature of business and assess its risk in the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction risks, for which the correspondent bank must:

1. Have policies and procedures for the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction based on the level of risk they pose;
2. Clearly define the obligations and responsibilities of each participant involved in the contractual correspondent relationship on the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction;
3. Include within the correspondent agreements entered with the client/respondent bank, clauses containing the obligation to provide customer due diligence information when the correspondent bank so requires;
4. Obtain top management's express approval before entering into new correspondent relationships.

TRANSLATION

5. When dealing with payment transfer accounts in other markets, the correspondent bank must have evidence that the client/respondent bank has met all due diligence obligations regarding its customers having direct access to this type of account and, therefore, the client/respondent bank is able to provide its customers' identification data when the correspondent bank so requires.

ARTICLE 4. RESPONDENT BANK DUE DILIGENCE. The banks established in Panama under the regulation and supervision of the Superintendency providing correspondent services to banks located in foreign markets should put in place and apply due diligence procedures and have knowledge of entities the banks intend to represent or with whom they have previously established correspondent banking services. As a result, the banks must assess the system for the prevention of money laundering, the financing of terrorism and the financing the proliferation of weapons of mass destruction.

The application of client/respondent bank due diligence within the correspondent relationship must contain, as a minimum, the respective analysis of the following items:

1. Sufficient information on the client/respondent bank to allow full understanding of the nature of its business;
2. The information and structure of the bank's top management as well as its shareholders;
3. The location in which the client/respondent bank has its operations, its business type and the jurisdictions where it has branch offices, subsidiaries and affiliate companies, including their activities;
4. Measures, controls and manuals for the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction;
5. The purpose of correspondent banking services, including the transactional profile;
6. The regulatory and supervisory situation of the client/respondent bank; in particular, the situation related to the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction. In order to comply with this, the correspondent bank must have documentation on whether the bank has been sanctioned or taken over by the regulators due to issues related to the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, as well as any other information that will permit the establishment of a transparent transactional correspondent relationship between the parties;
7. To make sure the client/respondent bank complies with all customer due diligence measures.

ARTICLE 5. ENHANCED DUE DILIGENCE MEASURES FOR CORRESPONDENT RELATIONSHIPS. The banks must apply enhanced due diligence measures, for which they will ensure they apply enhanced knowledge and due diligence measures to the correspondent relationship, all of which will be documented, whenever:

1. Banks are located in jurisdictions with weak standards for the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction identified in lists issued by international bodies such as the Financial Action Task Force (FATF), among others;
2. The correspondent relationship is with institutions that have been under investigation and/or publicly sanctioned for deficiencies in their system for the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction or were licensed in a non-cooperating country identified in the lists issued by the Financial Action Task Force (FATF);
3. There is a possibility that PEPs are shareholders of a respondent bank.

ARTICLE 6. CORRESPONDENT RELATIONSHIPS WITH SHELL BANKS. The banks established in Panama under the regulation and supervision of the Superintendency and providing correspondent services to banks may not enter into, maintain, administer or manage correspondent relationships with shell banks or act on their behalf; similarly,

TRANSLATION

Rule N.º 7-2016
Page 4 of 4

correspondent banks must be certain that client/respondent banks with which they maintain relationships do not allow their accounts to be used by shell banks.

ARTICLE 7. This Rule shall become effective on the first (1st) day of March, two thousand seventeen (2017).

Given in the city of Panama on the fourth (4th) day of October, two thousand sixteen (2016).

FOR COMMUNICATION, PUBLICATION AND ENFORCEMENT.

THE CHAIRMAN, a.i.

THE SECRETARY, a.i.

Jorge Altamirano – Duque

Luis Alberto La Rocca