

**Republic of Panama  
Superintendency of Banks**

**RULE N°. 2-2019  
(dated 11 April 2019)**

**“Whereby Rule 10-2015 on Preventing the Misuse of Banking and Trust Services is amended”**

**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 re-edited Decree Law 9 dated 26 February 1998 and all 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;

Article 36 of Law 1 dated 5 January 1984 provides that the Superintendency of Banks will supervise and oversee the proper functioning of the trust business;

Pursuant to the provisions of paragraphs 1 and 2 of Article 5 of the Banking Law, safeguarding the soundness and efficiency of the banking system and strengthening and fostering favorable conditions for the development of the Republic of Panama as an international financial center are objectives of the Superintendency of Banks;

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

According to Article 114 of the Banking Law, banks and other entities supervised by the Superintendency will adopt policies, practices and procedures that will allow them to know and identify their clients and their employees with the greatest certainty possible. The Superintendency is authorized to develop the relevant standards in conformity with policies and regulations in force in the country;

Law 23 dated 27 April 2015 adopted measures for the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction;

Article 19 of Law 23 of 2015 establishes the Superintendency of Banks, among others, as a supervisory body;

Paragraph 7 of Article 20 of Law 23 of 2015 provides that issuing guidance and feedback standards to the financial reporting entities, the nonfinancial reporting entities and activities performed by professionals subject to supervision for its enforcement, as well as the procedures for the identification of the final beneficiaries of legal entities and other legal arrangements, is among the duties of the supervisory bodies;

By means of Rule 10-2015 dated 27 July 2015, the Superintendency of Banks further developed the standards for the prevention of money laundering that banks and trust companies must adopt as minimum parameters for preventing their services from being conducted with or on funds coming from money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction;

Law 70 dated 31 January 2019, which modified the Criminal Code and prescribed other provisions, criminalized any tax evasion against the Republic of Panama's National Treasury

that affects the correct determination of a tax obligation in order to avoid paying the respective taxes;

FATF's 40 Recommendations are a coherent international standard that countries must effectively put in place through legal, regulatory and operational measures in order to have a sound domestic system that enables combating money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction;

According to FATF's Interpretative Note to Recommendation 3, countries should apply the crime of money laundering to all serious offences, with a view towards including the widest range of predicate offenses, including, as a minimum, all of those offenses that fall within the category of serious offenses, including tax crimes related to direct or indirect taxes that are predicate offenses to money laundering;

In accordance to FATF's Recommendation 37 on mutual legal assistance, countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offenses and terrorist financing investigations, prosecutions and related proceedings. In particular, countries should not refuse to execute a request for mutual legal assistance on the sole ground that the offense is also considered to involve fiscal matters;

During its working sessions, the Board of Directors determined it was necessary and advisable to amend some articles of Rule 10-2015 on preventing the misuse of banking and trust services aimed at including some aspects covered by FATF Recommendations related to due diligence.

## RESOLVES:

**ARTICLE 1.** Article 14 of Rule 10-2015 dated 27 July 2015 shall read:

**“ARTICLE 14. CUSTOMER PROFILE FOR INDIVIDUALS.** For individuals, banks and trust companies must prepare a customer profile that will include the form designed by the entity containing written information, as well as the documents supporting that information. As a minimum, the customer profile must contain the following information and documentation, which must be obtained before entering into the business relationship with that customer:

1. **Customer identification and verification:** Full name, age, gender, employment or employment status, marital status, profession or occupation, citizenship, residency and a suitable personal identification document.

For the purposes of the suitable personal identification document, the personal identification card, or the official personal identification card application form while this document is being processed, will be used in the case of a Panamanian citizen. The passport will also be acceptable for those Panamanian citizens living abroad. The tax identification number from the country or countries where the individual has his fiscal residence will also be required in order to maintain the information related to his tax identification number up to date.

The suitable personal identification document will be the passport for foreigners. Foreigners must also provide:

- a. The tax identification number of the country or countries where the individual has his fiscal residence in order to maintain the information related to his tax identification number up to date, and
- b. An affidavit indicating that the inflow and outflow of money made within the financial entity meet and will meet the tax obligations of his country or countries of fiscal residence.

According to the Banking Law, banks are authorized to cooperate with any investigation conducted by law enforcement agencies.

To meet the passport requirement, it will only be necessary to keep a copy of the page(s) where the customer's picture, signature and general information appear, as well as the page bearing the "entering the country" stamp. The requirement for a copy of the pages of the passport bearing the entering the country stamp is not applicable if the customer was accepted by the bank or trust company through visits abroad or when acceptance was made by companies affiliated to the group or by international license banks. These customers may also be identified by the official identification card from their home country bearing their picture, general data and signature.

Foreigners that have obtained residency in Panama may also be identified through the personal identification card issued by the Electoral Court of Panama.

People in our country under a permanent residency migratory status as a refugee or asylee may be identified through the refugee identification card issued by the National Immigration Service.

In all cases, the document must be current when submitting it for opening accounts.

For the purposes of updating the relevant files, the bank may update expired identification cards by verifying the database of the Electoral Court without requiring the customer to physically submit the document. Expired passports must be updated by the customer.

**PROVISO:** The affidavit referred to in (b) herein may be satisfied by a single, independent document or as part of the customer profile form.

2. **Origin and destination of resources or equity:** It is understood that the origin and destination of resources refers to: as origin, the jurisdiction(s) from which most of the funds are coming, or as destination, where the funds are sent to. This will always refer to geographical issues.
3. **Customer financial profile and source of resources or equity:** It is understood that the source of resources refers to the written proof of the origin of funds used to conduct any transaction.

The financial profile will be understood as the result of the joint analysis of the demographic and socioeconomic characteristics and variables submitted by a customer and verified by the entity when entering into a relationship, which must be augmented by updated and historical information. For such purposes, the customer must submit at least one of the following documents: job letter, social security tab, tax return, pay stub or any other legal or contractual documentation verifying the customer's income.

Furthermore, all reasonable measures for supporting the origin of funds, frequency of movements, geographic origin and whether the customer pays in cash, quasi-cash, checks or wire transfers will be taken into account at the beginning and during the contractual relationship to establish the usual behavior the customer will maintain with the reporting entity.

4. **Customer transactional profile:** It will be understood as the comparison between the expected financial profile and the frequency and capacity of a customer's real transactions in one or various timeframes.

The customer's financial information must be examined and the analysis of the quantity and volume of the transactions must be documented in the physical or digital file to establish the expected monthly or annual customer transactional profile when entering into the relationship.

During the contractual relationship, the bank or trust company must monitor and verify that the financial operations made by the customer do not show material

inconsistencies regarding the expected transactional profile that was determined when entering into the relationship.

When assigning a risk level to the customer, the bank or trust company must consider as criteria within the risk classification method, whether the origin and/or destination of the resources come from or are sent to jurisdictions considered to have weak measures against tax evasion or come from or are sent to jurisdictions that are non-cooperative in this matter.

**5. Other additional aspects to consider:**

- a. In cases when the customer is acting as the intermediary for the final beneficiary or owner of the operation, banks and trust companies must conduct due diligence on that final beneficiary.
- b. Banks and trust companies must understand and, as applicable, obtain information on the planned purpose and character of the business or professional relationship.
- c. Any new account or contract must comply with the assessment of the customer's financial and transactional profiles, in order to measure the risk of products or services offered.
- d. Banks and trust companies must have documentation in the relevant file of all actions taken to properly identify their customer and/or final beneficiary.
- e. Any service resulting from a relationship between a bank or trust company and a foreign customer will be subject to due diligence measures in conformance with the risk level the customer represents based on the international parameters and standards and internal policies and control procedures established by the entity.

All information required herein must be consolidated in one file, whether physical or digital.”

**ARTICLE 2.** Article 15 of Rule 10-2015 dated 27 July 2015 shall read:

**“ARTICLE 15. CUSTOMER PROFILE FOR LEGAL ENTITIES.** For legal entities, banks and trust companies must prepare a customer profile that will include the form designed by the entity containing written information, as well as the documents supporting that information. As a minimum, the customer profile must contain the following information and documentation:

1. **Customer identification and verification:** Legal entity's full name, registration data, domicile, address and phone numbers. For Panamanian legal entities, the tax identification number (RUC) will be required when applicable. For foreign legal entities, the tax identification number of the country or countries where they have their fiscal residence, when applicable. The bank or trust company must also request an affidavit indicating that the inflow and outflow made within the financial entity meet and will meet the tax obligations of the country or countries where they have their fiscal residence.

Trust companies must fully know and understand the information on the purpose of the trust fund.

**PROVISO:** The affidavit referred to herein may be satisfied by a single, independent document or as part of the customer profile form.

2. **Certifications verifying the incorporation and existence of the legal entity:** The requisite to obtain certifications verifying the incorporation and existence of the legal entity will be met as follows:
  - a. Copy of the Articles of Incorporation for a Panamanian legal entity or its equivalent for a foreign legal entity.

- b. For a Panamanian legal entity, the original or copy of the Public Registry certification or information extracted by the customer or the legal entity from the Public Registry's database verifying the existence of and information on the legal entity.
  - c. For a foreign legal entity, the documents equivalent to that of the provisions of paragraph 2 verifying the incorporation and existence of the foreign legal entity.
3. **Identification of dignitaries, directors, agents and legal representatives:** Banks and trust companies must identify dignitaries, directors, agents and legal representatives of the legal entities. For such purposes, banks and trust companies will only require a copy of the personal identification card of the chairman and/or legal representative, as the case may be, the secretary and the people appointed as signatories and agents of the legal entity. Trust companies must identify the custodian, advisor or people making decisions on the trust fund's equity and its distribution, whichever is the case.
4. **Identification of the final beneficiary:** Banks and trust companies must take reasonable measures to identify the final beneficiary using relevant information obtained through reliable sources. For such purposes, banks and trust companies must understand the nature of the customer's business and its shareholding and control structure. If a legal entity is the final beneficiary, the due diligence will be expanded until the individual who is the owner or controller is identified.

To identify the final beneficiary of corporations, reporting entities must make the relevant efforts to identify shareholders holding a percentage equal to or greater than ten percent (10%) of the issued shares of the relevant corporation, with the reporting entities requiring a copy of the personal identification document of each of these shareholders. Listed companies are exempt from identifying their final beneficiary, with the exception of those incorporated in countries classified as non-cooperative by the Financial Action Task Force (FATF). The data on the nationality, country of birth and country of residence must be obtained for all of [the individuals above].

The bank or trust company must maintain the support documentation certifying that the company is listed on the stock exchange in the file.

For foreigners belonging to jurisdictions with which Panama has entered into international agreements for the exchange of tax information duly ratified by the Republic of Panama and fully in force, the bank and trust company must ensure it has the information on the country and the [subject's] tax identification number for the country or countries of fiscal residence, in order to maintain the information related to the tax identification up to date.

For public entities (state-owned corporations) whose final beneficiary is the Panamanian State or a Foreign State, banks and trust companies must identify and take reasonable measures to verify the identity of the individual holding the highest administrative position.

For other legal entities whose final beneficiaries cannot be identified by shareholding, the reporting entity must ensure it obtains a certificate, certification or affidavit duly signed by the representatives or authorized persons, in which the final beneficiary(ies) is (are) listed.

When the reporting entity is not able to identify the final beneficiary, it will refrain from entering into or continuing the business relationship or conducting any transaction as long as there is any persistent doubt as to the identity of the customer or final beneficiary.

5. **Treatment of legal entities with offshore operations.** For Panamanian or foreign legal entities conducting offshore operations and having accounts in a bank in Panama, the bank must request an affidavit certifying that the resources deposited in those accounts have complied and will comply with the relevant tax obligations.

6. **Origin and destination of resources or equity:** It is understood that the origin and destination of resources refers to: as origin, the jurisdiction(s) from which most of the funds are coming, or as destination, where the funds are sent to. This will always refer to geographical issues.
7. **Customer financial profile and source of resources or equity:** It is understood that the source of resources refers to the written proof of the origin of funds used to conduct any transaction.

The financial profile will be understood as the result of the joint analysis of the demographic and socioeconomic characteristics and variables submitted by a customer and verified by the entity when entering into a relationship, which must be augmented by updated and historical information. For such purposes, the legal entity must submit at least one of the following documents: financial statements, duly signed, a tax return or any other legal or contractual documentation verifying the customer's income.

Furthermore, all reasonable measures for supporting the source of funds and the geographic origin of the funds, frequency of movements and whether the customer pays in cash, quasi-cash, checks or wire transfers will be taken into account at the beginning and during the contractual relationship to establish the usual behavior the customer will maintain with the reporting entity.

8. **Customer transactional profile:** It will be understood as the comparison between the expected financial profile and the frequency and capacity of a customer's real transactions in one or various timeframes.

When assigning a risk level to the customer, the bank or trust company must consider as criteria within the risk classification method, whether the origin and/or destination of the resources come from or are sent to jurisdictions considered to have weak measures against tax evasion or come from or are sent to jurisdictions that are non-cooperative in this matter."

**ARTICLE 3.** Article 30 of Rule 10-2015 dated 27 July 2015 shall read:

**"ARTICLE 30. SUSPICIOUS OPERATIONS.** Banks and trust companies must directly inform the Financial Analysis Unit of any event, transaction or operation that has been conducted, including attempts to conduct those operations, which is suspected of being related to or involved with the crimes of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, regardless of the amount and whether or not it can be confirmed or substantiated. [This requirement includes] any failure in controls.

The Compliance Officer will conduct the internal analysis of the unusual and/or suspicious operations resulting from matching the customer's profile with its monitoring systems.

When, during the course of their activities, reporting entities become aware of operations classified as suspicious operations that cannot be supported or substantiated, they must comply with the following actions:

1. Create a log containing operational information. The information will contain the data on the contractual relationship originating the operation, the date(s), the amount(s) and the type(s) of operations. This log must succinctly include the remarks of the employee detecting the operation.
2. Notify the Compliance Officer of the suspicious operation. The Compliance Officer will order a review of the operation to verify its suspicious nature and will succinctly include his respective remarks.
3. Notify the Financial Analysis Unit for the Prevention of Money Laundering and the Financing of Terrorism (UAF, for its acronym in Spanish) of the suspicious operation

using the forms established for that purpose. The notification will be made through the Compliance Officer immediately following the detection of the suspicious event, transaction or operation. In the event that gathering all of the information previously sent is complex or requires clarifications to be precise or accurate, the reporting entities must update the information previously sent to the Financial Analysis Unit (UAF) expeditiously through a supplementary suspicious transaction report.

4. Register in the log the date and the form for notification of the Financial Analysis Unit for the Prevention of Money Laundering and the financing of terrorism (UAF), as well as the date and number of the reply issued by the Unit;
5. Update the relevant file in the case of suspicious operations.
6. If necessary, attach charts, tables, notices or any other information that will permit the visualization of the suspicious operation that was the object of the report.”

**ARTICLE 4. ENACTMENT.** This Rule will become effective upon its promulgation.

**ARTICLE 5. ADJUSTMENT PERIOD.** Banks and trust companies will have a grace period until 15 May 2020 to comply with the provisions of Article 1 and 2 herein.

Given in the city of Panama on the eleventh (11<sup>th</sup>) day of April, two thousand and nineteen (2019).

**FOR COMMUNICATION PUBLICATION AND ENFORCEMENT.**

**THE CHAIRMAN,**

**THE SECRETARY,**

Luis Alberto La Rocca

Joseph Fidanque III