

Republic of Panama Superintendency of Banks

RULE N.º 6-2022
(dated 14 June 2022)

“Whereby Articles 13, 14, 15, and 16 of Rule 10-2015, on preventing the misuse of banking and trust services, are amended”

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

WHEREAS:

Pursuant 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;

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

Pursuant to Article 5 (1) of the Banking Law, safeguarding the soundness and efficiency of the banking system is an objective of the Superintendency of Banks;

Pursuant to Article 5 (2) of the Banking Law, strengthening and fostering favorable conditions for the development of the Republic of Panama as an international financial center is an objective of the Superintendency of Banks;

Pursuant to Article 112 of the Banking Law, banks and other entities supervised by the Superintendency are required to establish policies and procedures and the internal control structures to prevent their services from being misused for criminal purposes in Money Laundering, Terrorism Financing, and other crimes that are related or similar in nature or origin;

Pursuant to Article 113 of the Banking Law, banks and other entities supervised by the Superintendency will submit the information required by law, decrees, and other regulations in force in the Republic of Panama for the prevention of money laundering, terrorism financing, and other crimes that are related or similar in nature or origin. Furthermore, they are required to submit this information to the Superintendency whenever it may so require;

Pursuant 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;

Pursuant to Law 41 dated 2 October 2000, as amended by Law 1 dated 5 January 2004, a chapter entitled “Money Laundering” was added to Title XII of the Criminal Code, in which Article 1 typifies money laundering;

Pursuant to Law 50 dated 2 July 2003, terrorism acts and financing are typified in the Criminal Code as a separate crime and the relevant sanctions are established;

Pursuant to Law 23 dated 27 April 2015, measures are adopted to prevent money laundering, terrorism financing, and financing of the proliferation of weapons of mass destruction;

Pursuant to Article 19 of Law 23 of 2015, the Superintendency of Banks, among others, is established as a supervisory body;

Pursuant to Article 20 (7) of Law 23 of 2015, issuing guidance standards and feedback to the financial reporting entities, the nonfinancial reporting entities, and the activities performed by

professionals subject to supervision for their application, as well as the procedures for the identification of the final beneficiaries, legal persons, and other legal structures are among the powers of the supervisory bodies;

Pursuant to Article 22 of Law 23 of 2015 and to prevent money laundering, terrorism financing, and financing the proliferation of weapons of mass destruction, the Superintendency of Banks must supervise the following entities: banks; trust companies and any other activity they conduct; finance companies; financial leasing companies; factoring companies; issuers or processors of debit, credit and prepaid cards, whether individuals or legal entities; and issuers of payment instruments and electronic money;

Pursuant to the provisions of Law 23 of 2015 on the prevention of money laundering, terrorism financing, and financing of the proliferation of weapons of mass destruction, the Superintendency of Banks is authorized to supervise and regulate other reporting entities besides banks and trust companies (which are already under its supervision) in matters related to the prevention of money laundering;

As part of the fulfillment of the Action Plan carried out by Panama to be delisted from the Financial Action Task Force's (FATF) list of non-cooperative countries, the Sectoral Risk Assessment of Legal Entities and Trustees was conducted, assisted by the World Bank, by means of which the deficiencies related to each sector were identified;

Because of the Sectoral Risk Assessment of Legal Entities and Trustees, a strategy matrix was established in which the Superintendency of Banks should focus on to remedy the deficiencies identified regarding trusts, among which is to update the legal framework for the prevention of money laundering and terrorism financing, to include new controls that allow mitigating these deficiencies;

During its work sessions, the Board of Directors determined it was necessary and advisable to update the measures to prevent the misuse of banking and trust services included in Rule 10-2015, to comply with the mitigation strategy adopted by the Superintendency of Banks to remedy the deficiencies identified during the Sectoral Risk Assessment of Legal Entities and Trustees to fulfill with the Financial Action Task Force's Action Plan.

RESOLVES:

ARTICLE 1. Article 13 of Rule 10-2015 shall read:

“ARTICLE 13. MINIMUM CRITERIA OR VARIABLES TO ANALYZE AND DESCRIBE A CUSTOMERS' RISK PROFILE. To analyze and describe each customer's risk profile, reporting entities must include, as a minimum, the following criteria or variables, without being limited to them:

1. Nationality.
2. Country of birth or country of incorporation.
3. Country of domicile.
4. Profession or occupation.
5. Geographic zone of the customer's business activities.
6. Customer's economic and financial activity.
7. Type of legal structure used, when applicable.
8. Type, amount, and frequency of transactions (sent and received, national and international).
9. Source of resources (national and international).
10. Politically exposed persons (PEP).

11. Products, services, and channels used by the customer.

The criteria or variables used to analyze and describe a customer's risk profile must be defined in the bank's customer risk classification methodology."

ARTICLE 2. Article 14 (5) of Rule 10-2015 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 the business relationship with that customer:

1. ...
2. ...
3. ...
4. ...
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 intended purpose and nature 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, 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, which must be in conformance with the risk level the customer represents based on international parameters and standards and internal policies and control procedures established by the entity.
 - f. Trust companies must identify the final beneficiary or beneficiaries of the trust, i.e., the individuals who receive or will receive the benefit of the trust.

Any information required herein must be consolidated in one file, either physical or digital."

ARTICLE 3. Article 15 (3) of Rule 10-2015 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. ...

2. ...
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 identity card of the chairman and/or legal representative, the secretary, and the people appointed as signatories and agents of the legal entity. Trust companies must identify the custodian, advisors, or people, if any, making decisions on the trust assets and their distribution, whichever is the case. If the settlor is a legal person, the trust company must ensure that it knows the final beneficiary of said legal person, until [the trust company] knows the natural person.

In addition, the reporting entities must identify if the legal person has members provided by a resident agent, whether they are nominee directors or dignitaries for each of the different legal structures, as appropriate.

...”

ARTICLE 4. Article 16 (1) of Rule 10-2015 shall read:

“ARTICLE 16. IDENTIFICATION OF THE FINAL BENEFICIARY IN CORPORATIONS. For the purposes of the provisions of Article 15 (5) regarding the identification of shareholders holding a percentage equal to or greater than ten percent (10%) of the issued shares of the corporation, banks and trust companies must request documents proving the name of the individual identified as the final beneficiary and holder of the shares of the corporation, regardless of whether they are nominee or bearer shares.

1. In case of nominee share corporations, banks and trust companies must request at least one of the following documents:
 - a. Copy of the share certificate proving the name of the owner of nominee shares if they have been issued.
 - b. Affidavit signed by the Chairman or Secretary providing the information on the owners of nominee shares and the percentage held by each.
 - c. Copy of the share registry.
 - d. Certificate issued by the resident agent indicating the natural persons or final beneficiary owners of nominee shares and the shareholding percentage.

...”

ARTICLE 5. EFFECTIVE DATE. This Rule shall become effective upon its enactment.

Given at Panama City this fourteenth (14th) day of June, two thousand twenty-two (2022).

FOR COMMUNICATION, PUBLICATION AND ENFORCEMENT.

THE CHAIRMAN,

THE SECRETARY,

Rafael Guardia Pérez

Felipe Echandi Lacayo