

1st Edition - 2021

International Comparative Banking Regulations Guide

How to open a bank account 2021
A practical cross-border insight into rules and
regulations in various jurisdictions.

This publication provides corporate counsel and international
practitioners with comprehensive jurisdiction-by-jurisdiction
guidance on how to open a bank account including rules and
regulations around the world, and is also available at
www.adamglobal.com

Featuring Contributors from ADAM Global Members are: -

ACG International ADAM Global Ali & Qazi Advocates & Advisors Allonca Abogados ANH Auditors – Consultants Ardent Legal Advocates & Solicitors Buschmann & Asociados Evans Petree PC Karics Partners Ltd.	Kesikli Law Firm Labchey Consulting Limited Legal Profession Corporation Cast Global Multiplus Audit and Consulting. Co., Ltd Ruggle Partner SimmonsCooper Partners US Trust Advisory Services LLC
--	--



Published by:

ADAM Global
151 High St.
Billerica CM 12 9AB
United Kingdom

T: +447788410796

Website:

www.adamglobal.com

Email:

marketing@adamglobal.com

Design & lay out



Production Editor
Kiran Ludhani

©2021 ADAM Global
All rights reserved.

**Unauthorised reproduction
by any means, digital or
analogue, in whole or in
part, is strictly forbidden.**

International Comparative Banking Regulations Guide

HOW TO OPEN A BANK ACCOUNT:

rules and regulations in various jurisdictions

A practical cross-border insight

1st Edition – 2021

Contributing Editor:

Edith Nordmann, ACG International

Disclaimer:

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. ADAM Global and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication.

This publication is intended to give an indication of (legal) issues upon which you may need advice. **Full legal advice should be taken from a qualified professional when dealing with specific situations**

1	<u>Argentina</u> Allonca Abogados Mr. Jose María Allonca & Mr. Sebastián Lores Pg No: 13 -18	9	<u>Netherlands</u> Attorney Consulting Group International Mrs. Edith Nordmann Pg No: 80-89
2	<u>Brazil</u> Buschmann & Asociados Mr. Marcus Vinicius Buschmann Pg No: 21-25	10	<u>Nigeria</u> Simmons Cooper Partners Ms. Victoria Alonge Pg No: 91-99
3	<u>Cyprus</u> ANH Auditors – Consultants Mr. Andreas Hadjimitsis Pg No: 27-30	11	<u>Pakistan</u> Ali & Qazi Advocates & Advisors Mr. Ali Raza Kabir Pg No: 102-111
4	<u>Dubai (UAE)</u> ADAM Global Mr. Mohsin Ali Pg No: 32-38	12	<u>Switzerland</u> Ruggle Partner Mr. Peter Ruggle Pg No: 113 -123
5	<u>India</u> Ardent Legal Advocates & Solicitors Mr. Akshay Sapra Pg No:40-51	13	<u>Thailand</u> Multiplus Audit and Consulting.Co.,Ltd Surapon Thawanyavitchajit Pg No: 125-133
6	<u>Japan</u> Legal Profession Corporation Cast Global Mr. Masato Shibata Pg No: 53-57	14	<u>Turkey</u> Kesikli Law Firm Mr. Omer Kesikli & Mrs. Sena Ilic Pg No: 136-146
7	<u>Kenya</u> Labchey Consulting Limited Mr. Lagan Chege Pg No: 59-66	15	<u>USA</u> Evans Petree PC Mr. R. Mark Field & US Trust Advisory Services LLC Mr. Robert Payne Pg No: 148-153
8	<u>Mauritius</u> Karics Partners Ltd. Mrs. Kalindee Ramdhonee Pg No: 69-78		



From the Contributing Editor:

Dear Reader,

Welcome to the 1st edition of ADAM Global – International Comparative Banking Regulations Guide.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance on how to open a bank account including rules and regulations around the world, and is also available at www.adamglobal. The question and answer chapters, which in this edition cover 17 jurisdictions, provide detailed answers to common questions raised by cross-border entrepreneurs dealing with international banking regulations.

This publication has been written by leading advisors and industry specialists, all of whom are members of ADAM Global, for whose invaluable contributions the editor and publisher are extremely grateful.

Edith Nordmann, ACG International

Contributing Editor ADAM Global

Argentina

Sections

Page number

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....13-14
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....14-15
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....15-16
4. Corporate and Individual Bank Account	
Documents & Requirement.....	4.1 – 4.2.....16
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....16-17
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....17
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....17
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....17
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....17-18
10. Any Points to Observe?	
Argentian operations on International	10.1.....18

Brazil

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....21
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....21-22
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....22-20
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....20-24
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....24
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....24
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....24
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....24
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....24-25

Cyprus

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....27
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....27-28
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....28-29
4. Corporate and Individual Bank Account	
Documents & Requirement.....	4.1 – 4.2.....29
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....30
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....30
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....30
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....30
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....30

Dubai

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....32-33
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....33-34
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....34-35
4. Corporate and Individual Bank Account	
Documents & Requirement.....	4.1 – 4.2.....35-36
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....36-37
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....37
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....37-38
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....38
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....38

India

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....40-43
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....43-44
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....44-47
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....47-48
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....48
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....48-49
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....49
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....49-50
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....50
10. Any Points to Observe?	
Customer Identification Procedure.....	10.1.....50-51

Japan

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....53
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....53-54
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....54-55
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....55-56
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....56
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....56
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....56
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....56-57
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....57

Kenya

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....59-62
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....62-63
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....63-64
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....64-65
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....65
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....65
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....65-66
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....66
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....66

Mauritius

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....69-72
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....72-74
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....74-76
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....76
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....76-77
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....77
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....77
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....77-78
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....78

Netherlands

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....80-82
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....83-85
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....85-86
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....86
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....86-87
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....87-88
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....88
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....88
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....88-89

Nigeria

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....91-93
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....94-95
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....95-96
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....96-97
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....97-98
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....98
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....98
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....98
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....98-99
10. Any Points to Observe?	
New Policies and regulations.....	10.1.....99

Pakistan

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....102-103
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....103-106
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....106-107
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....107-109
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....109-110
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....110
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....110
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....110
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....110
10. Any Points to Observe?	
Argentian operations on International	10.1.....110-111

Switzerland

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....113-116
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....116-121
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....121
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....121
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....122
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....122
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....122-123
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....123
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....123

Thailand

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....125-126
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....126-129
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....129-130
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....130
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....130-131
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....131
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....131-132
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....132
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....132-133

Turkey

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....136-139
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....139-143
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....143-144
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....144
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....144-145
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....145
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2.....145
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....145-146
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....146

USA

1. LEGAL OVERVIEW	
Laws and Regulations.....	1.1 – 1.8.....148-149
2. Formal Requirements	
Opening Bank Account.....	2.1 – 2.9.....149-150
3. Process and way of working	
Proof and Compliance.....	3.1 – 3.7.....150-152
4. Corporate and Individual Bank Account	
Documents & Requiremen.....	4.1 – 4.2.....152
5. Documents needed to open a corporate bank account	
Documents & Requirement.....	5.1 - 5.4.....152
6. Digital-/Cryptocurrency	
Policies & Requirements.....	6.1 & 6.2.....152-153
7. Opening an account without proof of Residency	
Proof of Residency.....	7.1 & 7.2..... 153
8. Recent developments in retail banking	
Retail Banking services.....	8.1 & 8.2.....153
9. Recent developments in Anti-Money Laundering (AML) and online banking	
Online Banking Operations.....	9.1.....153

1. Legal overview - Argentina

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

Each and every Financial Entity (as defined per Argentinian Law N° 21.526) must comply with AML/ATF/FS International and Local regulations such as:

The UN Convention Against Transnational Organized Crime, UN Convention Against Corruption, UN Security Council N° 2.426, OECD AML/ATF Regulations such as the Common Reporting Standard and the Convention on Mutual Administrative Assistance in Tax Matters, Foreign Account Tax Compliance Act, USA Patriot Act, GAFI Recommendations on AML/ATF, Argentinian Law N° 25.246, Argentinian Financial Information Unit's (U.I.F.) Recommendations, Argentinian Central Bank's Communications on AML/ATF, and the Argentinian National Securities Commission if applicable.

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

In Argentina, the main administrative authorities for AML/ATF matters are the U.I.F. ("Unidad de Información Financiera" – Financial Information Unit), A.F.I.P. ("Administración Federal de Ingresos Públicos" – Federal Administration of Public Income), B.C.R.A. ("Banco Central de la República Argentina" – Argentine Republic's Central Bank) and the C.N.V. ("Comisión Nacional de Valores" – National Securities Commission) if applicable.

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

Each and every Financial Entity (as defined previously), Persons who usually exploit legal gambling activities, Authorized Securities Exchange Agents, Public Commerce Registries, Registered Art and other valuables Dealers, Insurance Companies, Public Notaries, Customs Officers, Companies recipient of Donations, Vehicle Retail Dealers, and Registered Professions indicated in Argentinian Law N° 25.246.

Cross-Border reporting requirements do exist in Argentina as per every AML/ATF related International Treaty or Convention signed and ratified by our country, such as UN, OECD and GAFI regulations.

1.4 Is an application for a business account with a bank located in your country necessary?

Yes, it is for each and every Bank in our country, which are defined as Financial Entities.

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Yes, Banks are required by law to perform due diligence processes on each and every subject that applies for a Bank Account opening. The thoroughness of said process depends on the subjects' characteristics, such as if the applicant is a human or legal entity, its business, etc.

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a *corporate non-resident* in order to be eligible for a bank account?

Yes, a non-resident corporation must register itself in both the I.G.J. ("Inspección General de Justicia" - Argentinian Superintendency of Corporations) and the A.F.I.P. for tax matters.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

Legal requirements which need to be met, aside from both registrations indicated on our previous answer (1.6), are the delivery of the Company's by-laws and its modifications, latest Board of Directors/Managers Designation, Company's latest yearly/quarterly (as applicable) Financial

Statements, latest Legal Domicile registration and the current (as to the date of application) Shareholders Registry.

Said information is to be required as a minimum basis, as the bank can require more information as it may consider necessary for its K.Y.C. and AML/ATF compliance standards.

1.8 Is cybersecurity and data privacy formally regulated?

Yes, both subjects are regulated here in Argentina, with Laws N° 26.388 for cybersecurity and N° 25.326 for data privacy.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

The answer shall depend on the customer's characteristics (if it is a human person or a corporate entity, the activity developed, etc.). Financial Entities in Argentina do request K.Y.C. information which is comprehensive to personal, financial and commercial information. The amount of said information to be provided also depends on the type of bank account to be applied for and its related services.

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

Financial Entities prepare their individual KYC policies in full compliance to Law N° 25.246 and international conventions as applicable (e.g., FATCA). Individual acceptance policies are based on procedures prepared in order to identify, on a scope that each Financial Entity may consider necessary, their customer in regards to the source of their assets, the transparency and full legal compliance and legitimacy of their activities.

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes, Financial Entities do research thoroughly each application before granting their application. Nonetheless, every customer has a profile created for them in accordance to their characteristics and the services requested by them to their banks.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

Yes, Law N° 25.246 expressly requires banks to obtain personal information of their clients (both real and potential) regarding their identity, legal structure, domicile and legal representatives, as a minimum basis. Individual K.Y.C. procedures of each bank usually add information to be required based on the characteristics of each particular client.

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

Customer identification may vary on the particular characteristics of each one of customers, as a Bank shall not require the same information to a common employee as to a multinational industrial company. As such, Banks do have each their own K.Y.C. and AML/ATF procedures based on both international and local regulations.

Yes, there are special/enhanced due diligence requirements for special customers such as foreign entities, public listed companies, etc.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

Foreign shell banks are prohibited under Argentinian Legislation.

B.C.R.A.'s admission, as the main banking public authority in Argentina, is the main requirement for any Financial Entity to be obtained in order to operate in our country.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

Yes, a periodically statement about the status of their ultimate beneficial ownership is required to Companies. Also, such statement is required when incurring in register matters with I.G.J. and several other relevant operations under the surveillance scope of U.I.F.

2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?

Commercial, Investment and Mortgage banks, as well as Financial Companies, Companies for Savings and Loans destined to Housing and other Real Estate, Credit Unions, and any other entity that, in accordance to Law N° 21.526 (Law of Financial Entities), may be consider as a Financial Entity by the B.C.R.A. in accordance to the volume and characteristics of their operations.

2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?

Yes, some banks may prefer to focus their operations on corporate clients, large investment projects and/or public authorities; as such leaving aside retail operations for individuals.

3. Process and way of working

3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?

Yes, both K.Y.C. and C.D.D. processes are required to be followed by banks on every customer.

3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?

Although information to be required may vary depending on customer's characteristics, banks do usually require as much identification as necessary in order to obtain a clear individual profile of each customer. General identification information such as name, age, business activities and housing for persons, while corporate clients are required to submit their By-laws, information of authorities and shareholders, business information (such as Financial Statements), beneficial ownership, etc.

3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.

Yes, they are allowed but with limitations.

On a daily basis, both individual and corporate clients may transfer up to AR\$ 250.000 and US\$ 12.500 via Internet. Nonetheless, clients may inform their banks on their intention to perform a transaction over said maximum amounts on a certain date, to which, after providing information required by banks, the operation is most usually accepted. Such approval is much more rapidly obtained by corporate clients who usually perform said transactions under their business operations.

3.4 Do the banks require proof of compliance with national and international laws and regulations?

Yes. In particular, banks do require proof of compliance to corporate clients regarding Law N° 27.401 (Business Criminal Law) and the Politically Exposed Person's regulations, among others on a local scope, while not being listed on any international terrorism list (as a minimum) on the international level.

3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?

Yes, banks do have to report such transactions, considered as “Operaciones Sospechosas – Suspicious Operations” to the U.I.F.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

Yes, such transactions must be reported to both B.C.R.A. and A.F.I.P. If said transaction is unusual to the customer and without any economic/legal valid justification to be performed, and of a complex and unjustified structure, they must also be reported to U.I.F.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?

Yes, a bank can suspend, close and later liquidate such an account as a sanction per the B.C.R.A. regulations and the specific bank account contract agreed upon by each customer. Both administrative and judicial procedures are open for the customer in order to defend itself.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

Required documents are:

I.D.'s of shareholders, authorities and attorneys-in-fact.

Tax I.D. certificate

Latest employee's retirement contribution certificate

Notarized copy of the Company's by-laws and its modifications

Notarized copy of the Company's latest Board of Directors designation

(Please note that said documents are required on a minimum basis)

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

No, it is not required, but most (if not all) compliance departments do verify that such structure corresponds with other corporate documentation and information provided. Yes, a bank may request any additional information that considers necessary in order to verify any information firstly provided.

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

Personal I.D.

Tax I.D. Certificate

Latest credit card bill or a service (water, light, gas, etc.) receipt billed to the applicant.

Depending on the employment status of the applicant, these documents may also be requested:
. If the applicant is an employee, the latest three (3) salary receipts shall be requested.

<p>. If the applicant is self-employed, latest Income Tax Statement and six (6) retirement contribution payment certificates or Monotax certificate (if applicable) shall be requested.</p> <p>. If the applicant is retired, latest payment receipt shall be requested.</p>
<p>5.2 What documents are needed in order to open an individual bank account?</p> <p>Please, refer to our answer 5.1.</p>
<p>5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?</p> <p>Yes, a bank can always refuse to open such an account, but is required to comply with both B.C.R.A.'s regulations and Law N° 24.240 (Consumer's rights), fully justifying said denial.</p>
<p>5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?</p> <p>A customer may submit a complaint to the bank's User Attention Officer.</p>
<p>6. Digital-/Cryptocurrency</p>
<p>6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.</p> <p>Yes, both individuals and companies may acquire such account. Customers must register with the digital bank, and have an account in a 'traditional' bank to financially support said registration.</p>
<p>6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?</p> <p>As of today, no recordkeeping is required, but a large cryptocurrency transaction must be reported to both U.I.F. and A.F.I.P.</p>
<p>7. Opening an account without proof of Residency</p>
<p>7.1 Can an account be opened without proof of Residency?</p> <p>No, it cannot.</p>
<p>7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.</p> <p>Please, refer to our answer 7.1</p>
<p>8. Recent developments in retail banking</p>
<p>8.1 What recent developments in retail banking have taken place?</p> <p>Re-Launch of the Universal Free Bank Account, Banking Digitalisation (Home-Banking), Suspension of Bank Accounts closure due to lack of payments (because of the CoVID-19 Pandemic).</p>
<p>8.2 What retail banking services are offered to customers?</p> <p>There is a wide range of services offered to customers that may depend on the characteristics of each customer, mainly on the volume of financial operations (savings, investments and expenses) performed.</p>
<p>9. Recent developments in Anti-Money Laundering (AML) and online banking</p>
<p>9.1 What recent developments in AML and online banking have taken place?</p>

Corporate compliance matters on AML are becoming more important in the present, as banks do require their corporate clients to submit information that justifies online banking operations. Additionally, the incorporation of compliance officers to both companies and Financial Entities is becoming much more patent as U.I.F., A.F.I.P. and B.C.R.A. have become much more interested in compliance matters.

10. Any Points to Observe?

10.1

In Argentina, besides AML/ATF regulations, B.C.R.A. has imposed several strict regulations on Foreign Exchange that patently restrict banking activities regarding Argentinian operations on an international level, both for imports and exports, not only on a banking scope but also on a fiscal and customs level together with A.F.I.P.

Such provisions may be found on the B.C.R.A.'s Coordinated Text which is published online and updated with new regulations on a monthly basis (sometimes, almost weekly), which constantly modifies our local foreign exchange activities.

Company name: **ALLONCA ABOGADOS - LEGAL & BUSINESS CONSULTING**

Country: ARGENTINA

Office IP address: www.alloncalaw.com

Office address: Av. Leandro N. Alem 734, Piso 5°, Oficina 16, Ciudad Autónoma de Buenos Aires, AR.

Tel: +54 (11) 5217 3003

URL: www.alloncalaw.com

Author: José María Allonca & e-mail: jma@alloncalaw.com

Autor : Sebastián Lores & e-mail: slores@alloncalaw.com

Company & Author details

ALLONCA ABOGADOS – Since 1991, Allonca Abogados focuses its activity on the commercial operations of both local and international companies that pursue business in Argentina. The firm has a strong orientation on the ‘Middle Company’ market and has developed a wide network of commercial partnerships with clients in both the public and private sectors in Argentina and abroad. We have offices in Buenos Aires, Argentina and in Sao Paulo, Brazil, as well as liaison offices in America, Europe, Asia and the Middle East. Allonca Abogados can provide legal counsel internationally. From Buenos Aires, the firm offers standardized and centralized services, attending to local and global clients’ needs through the development and execution of legal strategies on multiple jurisdictions.

Author: Sebastián Lores

Address: 734 Leandro N. Alem Ave., 5th Floor, Office 16 – City of Buenos Aires

Tel: +541152173003

e-mail: slores@alloncalaw.com

LinkedIn URL: <https://ar.linkedin.com/in/sebasti%C3%A1n-lores>

Company URL: <https://alloncalaw.com/web>

Company LinkedIn URL: <https://ar.linkedin.com/company/allonca-esquive>

Sebastián has been a part of Allonca Law Firm since June 2021, previously being the legal counsellor of Sociedad Comercial del Plata S.A. –an Argentina based business publicly listed holding with ventures on construction, entertainment, real estate, railway administration and retail services- as well as Morixe Hermanos S.A. –an Argentina based listed company and major stakeholder in the national foods market; for almost three years. Previously, Sebastián has been the main legal coordinator of a major company in the field of Banking Electronic Security.

Author: José María Allonca



Address: 734 Leandro N. Alem Ave., 5th Floor, Office 16 – City of Buenos Aires

Tel: +541152173003

e-mail: jma@alloncalaw.com

LinkedIn URL: <https://ar.linkedin.com/in/jose-maria-allonca-7325b18>

Company URL: <https://alloncalaw.com/web/>

Company LinkedIn URL: <https://ar.linkedin.com/company/allonca-esquivel>

Founding Partner of Allonca Law Firm in Buenos Aires, Argentina. Since 1987, José María has been rendering legal advice on business law to foreign and local companies, in different sectors and industries, doing business in Argentina and LATAM countries.

José María has a large experience in commercial contract negotiations, M&A and cross-border transactions, as well as regulatory issues. He has been part of the academic staff of different institutions in Argentina on matters related to corporate law. José María also represents several local and foreign companies and investors, both as Director and Statutory Supervisor.

1. Legal overview – Brazil
<p>1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?</p> <p>UN Convention Against Corruption, the Convention of the Organization of American States (OAS), and the Public Officials Convention OECD foreigners in the face of the transnational character of the corruptive phenomenon, Foreign Account Tax Compliance Act, Common Reporting Standard, INTER-AMERICAN CONVENTION AGAINST TERRORISM, International Convention for the Suppression of the Financing of Terrorism, CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS (OECD), OECD Anti-Bribery Convention, Financial Action Task Force on Money Laundering, AML and KYC rules.</p>
<p>1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.</p> <p>COAF (Financial Active Control council) BACEN (Central Bank), CVM (Brazilian Security Exchanges Commission) if applicable.</p>
<p>1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?</p> <p>All financial institutions and a list of professions dealing with clients outside Brazil have AML and KYC responsibility. Reporting is done locally and confidentially. Treaties to share information with other countries can be applied. For instance, Accountants and Financial advisors must report. Lawyers do not have to report because of the right to receive privileged information. Lawyers are forbidden to share information.</p>
<p>1.4 Is an application for a business account with a bank located in your country necessary?</p> <p>Yes, it is.</p>
<p>1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)</p> <p>Yes. They want to know who is the individual at the end. Sometimes they accept only the manager if is a company with too many partners and have other evidences of good practices.</p>
<p>1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a <i>corporate non-resident</i> in order to be eligible for a bank account?</p> <p>No, it is not.</p>
<p>1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?</p> <p>You need a Tax ID, CPF if an Individual or a CNPJ if a legal entity. A Legal Entity must be settled in Brazil.</p>
<p>1.8 Is cybersecurity and data privacy formally regulated?</p> <p>Yes, it is.</p>
2. Formal requirements
<p>2.1 What formal requirements need to be met in order to open a bank account?</p> <p>Provide KYC, financial and business issued documents in general. Each compliance sector can generate more requirements by themselves, so more transparency, easier to open the account.</p>

<p>2.2 What strict legislation and individual acceptance policy needs to be taken into account?</p> <p>The KYC procedures to identify the client, his profile, his business and the source of his wealth and also make sure that it's not a criminal and that the money is clean (taxed) money and that he carries out a legitimate business.</p>
<p>2.3 Do the banks have to look very carefully at each application before they can make a decision?</p> <p>Yes. And each compliance sector can generate more requirements by themselves, nowadays is a business matter to not be exposed to problems with bad clients.</p>
<p>2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)</p> <p>The bank will want to understand the business of the client well and why it's being carried out in different locations. Apart from that, they will concentrate on who is the physical person that is the ultimate beneficial owner of the structure and also its directors. Sometimes they accept only the manager/Directors if the potential new client is a company with too many partners and have other evidences of good practices.</p>
<p>2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?</p> <p>KYC and AML rules. However, depending on customer activities probably also additional requirements (regulation requirements).</p>
<p>2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?</p> <p>It is totally forbidden.</p>
<p>2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?</p> <p>In Brazil this is not necessary to provide such information to Authorities as to manage a company you must be a Brazilian or a Foreigner with the permanent Visa. And you have joined liability with the company regarding Taxes and duties. Furthermore, the foreign partners of the Brazilian Company also must grant a Power of Attorney to a Brazilian or a foreigner with a permanent visa, and this person has joined liability with the foreign partners.</p>
<p>2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?</p> <p>Commercial banks, Investment banks, Digital banks, Development banks, Multiple, credit unions</p>
<p>2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?</p> <p>There are banks that concentrate more on corporate and investment banking and are not interested in retail banking. Some of them only want clients with X revenue or X investments in the bank. So amount of money, type of industry or business, size of business can be an issue regarding some specifics banks. Brazil has more than 200 banks, plus credit unions and others.</p>
<p>3. Process and way of working</p>

<p>3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD))?</p> <p>Yes, banks are obliged to follow KYC and CDD processes.</p>
<p>3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?</p> <p>The banks request information depending on the application, e.g., general identification info, business activities, profile of investor, detailed description of business to be carried out. Sometimes, more information can be requested. Depends on each compliance department of each bank.</p>
<p>3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.</p> <p>No restrictions apply to cash transactions. But more than 10k Brazilian Reais you need to declare and sign a document before the bank identifying yourself. This is to comply with Money Laundering and Financial protection law and regulations.</p>
<p>3.4 Do the banks require proof of compliance with national and international laws and regulations?</p> <p>Yes, but how much they will demand depends on each bank.</p>
<p>3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?</p> <p>Yes, banks must send information to COAF (money laundering investigation), Central Bank, and Revenue Services.</p>
<p>3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?</p> <p>Requirements depend on Legal entity or individuals, according value of the transaction: 2k BRL for individuals and 4k for legal entities.</p>
<p>3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?</p> <p>It is an agreement between parties, so the bank can close an account any moment and not give any reason. By Central Bank determinations Banks must notify you about the intention to terminate the agreement (the account) giving you some time to move the money already in the account to another bank. Banks only can freeze your money if there is any judicial procedure or authority request.</p>
<p>4. Corporate bank account</p>
<p>4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?</p> <p>You can't have a corporate account from a direct Foreign Company. You must settle a Brazilian Company under Brazilian law. Foreign partners must get a CADEMP registration before Central Bank and CNPJ (TAX ID), elect a Brazilian or a Foreigner with Permanent Visa to be the Attorney-in-fact of the Foreign Partner, settle the company electing a Brazilian or a Foreigner with Permanent Visa to be the Company Main Director (with all liabilities) and get the Brazilian Company Tax ID (CNPJ). Only after that you can apply to open a Bank Account, upon which the bank shall request the following documentation from the Foreign Partners, like passports of owners and/or Directors,</p>

certificates, articles of association, by-laws, etc, last Balance and any other document that the Compliance department requests to be showed.
<p>4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?</p> <p>In general no. However, this is a decision of each compliance department of each bank. That is why depending of the structure and company you must apply to more than one bank.</p>
5. Documents needed to open a corporate bank account
<p>5.1 What are the requirements for opening an individual account?</p> <p>When opening an individual account, one must get a CPF (Brazilian Tax ID), bank application, provide a copy of the passport, (other) kyc documents, sometime banks require bank statements from abroad.</p>
<p>5.2 What documents are needed in order to open an individual bank account?</p> <p>CPF number, copy of passport, bank statement from abroad.</p>
<p>5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?</p> <p>As the bank account is an agreement. Banks can always deny.</p>
<p>5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?</p> <p>There aren't any procedures. It is an agreement between parties.</p>
6. Digital-/Cryptocurrency
<p>6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.</p> <p>Yes, with some Cryptocurrency brokers both individuals or companies can open a cryptocurrency account. The requirement is to have a bank account in Brazil.</p>
<p>6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?</p> <p>Nowadays there is a lack of regulation, but this is changing fast.</p>
7. Opening an account without proof of Residency
<p>7.1 Can an account be opened without proof of Residency?</p> <p>It depends. It is a decision of each bank. Regular banks do not accept clients without proof of residency. Digital banks may be more willing to accept clients without proof of residency.</p>
<p>7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.</p> <p>This is a matter for Compliance department of each bank.</p>
8. Recent developments in retail banking
<p>8.1 What recent developments in retail banking have taken place?</p> <p>further digitalisation, spreading of e-wallets – nfc transactions</p>

8.2 What retail banking services are offered to customers?

All the range; there is no restriction.

9. Recent developments in Anti-Money Laundering (AML) and online banking**9.1 What recent developments in AML and online banking have taken place?**

Online banking increases in usage and popularity as have zero or low bank fees, very detailed and stringent requirements for aml.

Company name: **BUSCHMANN & ASSOCIADOS ADVOGADOS**
Country: BRAZIL
Office IP address: www.bea.adv.br
Office address: Avenida Almirante Barroso nº 63, gr 809, Downtown, Rio de Janeiro City, RJ, Brazil
Tel: + 55 21 2240-3936 / + 55 21 9991154296
Fax:
URL: www.bea.adv.br
Author : Marcus Vinicius Buschmann
e-mail: mvb@bea.adv.br

Company & Author details

Buschmann & Associates Attorneys – B&A - advises Brazilian and multinational clients in the structuring and execution of operations and projects in many business sectors such as oil and gas, oil services, shipping, shipbuilding and offshore equipment, real estate, infrastructure, taxation, import and export of services and equipment, mergers and acquisitions, purchase and sale of shares or assets, loans and financing, foreign investment and financial markets. **B&A's lawyers have more than 20 years of experience** serving multinational companies based throughout the world's major business centers, including the Americas, Europe, Asia and Africa with in-depth solutions tailored exactly to clients and their projects in Brazil and Latin America. B&A's experience also includes corporate solutions, mergers and acquisitions, taxation, finance and Central Bank regulation, project finance, civil law, tax and customs, regulatory, corporate, labor law and a great experience in litigation.

Author: Marcus Vinicius Buschmann



Address: Avenida Almirante Barroso nº 63, gr 809, Downtown, Rio de Janeiro City, RJ, Brazil
Tel: +55 21 99115-4296
e-mail: mvb@bea.adv.br
LinkedIn URL: <https://www.linkedin.com/in/marcus-vinicius-buschmann-2853b42/>
Company URL: www.bea.adv.br

Marcus Vinicius Buschmann has more than 20 years of experience and excellence. Buschmann has a Master in Tax Law (M.Sc), is a former Professor of Civil Law Procedure at Candido Mendes University and author of many legal articles. He is also a Certified Data Protection Officer (DPO), has extensive practice in helping foreign companies and entrepreneurs to do business in Brazil and Latin America. Buschmann is appointed as Highly Regarded Lawyer by International Financial Law Review (IFLR1000) and appointed by Best Lawyers publication as one of the best lawyers in Brazil.

Marcus also advises several associations and entities, taking prominent roles in some of them. He was the legal counsel of the Brazil-Russia Chamber of Commerce, Industry and Tourism from 2003 to 2011. He is also legal counsel at the Brazilian Naval Construction and Repair Industry and Offshore Syndicate (SINAVAL) since 2008. In 2013/2014 Marcus had a great experience participating in cooperation agreement with Haynes and Boone LLP helping US and Brazilian Companies in cross-border transactions.

1. Legal overview - Cyprus
<p>1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?</p> <p>Anti-money laundering law which is all inclusive (AML, anti-terrorist etc).</p>
<p>1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.</p> <p>Depends on the profession. Accountants are monitored by ICPAC (Institute of Certified Public Accountants, other professions are monitored centrally. There is also AML authority to which all AML suspicious cases need to be reported – MOKAS.</p>
<p>1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?</p> <p>All financial institutions and all professions dealing with clients outside Cyprus have AML responsibility. Reporting is done locally and confidentially and it is strictly against the law to tip off the suspected person.</p>
<p>1.4 Is an application for a business account with a bank located in your country necessary?</p> <p>Yes</p>
<p>1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)</p> <p>Yes, very very thoroughly. The banks need to have a very clear picture of the source of money as well as the profile and business of the UBO and his companies including names and websites of clients etc. and a very clear description of his business, how much money per annum will be invested in Cyprus by the UBO and how much money will be going through the account annually.</p>
<p>1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?</p> <p>No, not mandatory.</p>
<p>1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?</p> <p>It is not mandatory to register with a governmental agency locally, but if a Cyprus company is opening an account in Cyprus, then it would have to register with tax authorities and obtain tax id. This is not a legal requirement in order to get bank account, but the bank will ask for it. If a foreign entity or person with no business in Cyprus applies for a bank account it is almost certain that the application would be rejected by the bank.</p>
<p>1.8 Is cybersecurity and data privacy formally regulated?</p> <p>As per EU laws / Directives</p>
2. Formal requirements

<p>2.1 What formal requirements need to be met in order to open a bank account?</p> <p>The requirement is to provide the bank with a KYC filled out information and business information that would satisfy it in order to open bank account.</p>
<p>2.2 What strict legislation and individual acceptance policy needs to be taken into account?</p> <p>The Cyprus banks follow KYC procedures which are procedures to identify the client, his profile, his business as well as the source of his wealth, but also make sure that the client is not involved in criminal activities, that the money is clean (taxed) and that the business carried out is a legitimate business.</p>
<p>2.3 Do the banks have to look very carefully at each application before they can make a decision?</p> <p>Yes, the Cyprus banks look very deeply at each application and they investigate each one thoroughly.</p>
<p>2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)</p> <p>The bank will want to understand the business of the client well and why it is being carried out in different locations. Apart from that the bank will concentrate on who is the physical person that is the ultimate beneficial owner of the structure and also the directors are.</p>
<p>2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?</p> <p>As explained in previous questions the Cyprus banks follow risk-based KYC and Due Diligence procedures as the bank or service provider has to assess the AML riskiness of the prospective client and then carry out the procedures based on the risk assessment. For high-risk prospective clients enhanced procedures are carried out</p>
<p>2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?</p> <p>It would not be possible to open a bank account for a shell company nowadays. Prohibitions of institutions etc. are governed by EU law and the same is applicable for risky countries etc.</p>
<p>2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?</p> <p>There is an EU requirement for all EU countries to maintain a register of UBOs for all companies in the country and this has just come into effect in Cyprus. As a result of this there is a deadline for completion of the register which needs to be updated with current info at all times</p>
<p>2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?</p> <p>Retail banks, corporate banks, savings banks etc. which also have investment sections</p>
<p>2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?</p> <p>There are banks that concentrate more on corporate and investment banking and are not interested in retail banking.</p>
<p>3. Process and way of working</p>

<p>3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD))?</p> <p>Yes, as previously explained, the banks in Cyprus are obliged to follow KYC and CDD procedures.</p>
<p>3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?</p> <p>The banks will request the following: identification information, business activities, source of wealth, profile of investor, detailed description of business to be carried out, identification of clients and suppliers, geographic location where money will be received and sent to etc.</p>
<p>3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.</p> <p>Cash transactions are frowned upon. You can make a small deposit at the bank of say less than 4.000, = Euro otherwise the bank will ask for a proof of where the money came from</p>
<p>3.4 Do the banks require proof of compliance with national and international laws and regulations?</p> <p>The banks ask for tax id etc. If there is any doubt that there is no compliance with any laws the banks will close the account.</p>
<p>3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?</p> <p>If the banks suspect any AML wrong doing they will report to MOKAS and will also close the account without having to provide the reason.</p>
<p>3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?</p> <p>All companies registered in Cyprus, even dormant or shelf companies, are obliged by the law to keep proper books and records and have audited annual financial statement by licensed auditor.</p>
<p>3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?</p> <p>The bank can close an account at any moment and not give any reason. The client is given some time to transfer the funds already in the account to another bank. If there is concrete evidence that the money is not clean the bank can freeze the account.</p>
<p>4. Corporate bank account</p>
<p>4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?</p> <p>In order to open a corporate bank account, the client needs to provide the bank with corporate certificates, such as registration, directors, shareholders, registered office, tax and VAT.</p>
<p>4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?</p> <p>The bank will ask for any information it needs to understand the business. If it is a large group with 30 subsidiaries the bank won't ask for official certificates of each subsidiary, but will ask certificates of the company in question and its mother companies. However, it will ask for group</p>

structure and official proof of the % holding of companies owning, directly or indirectly 25% or more of the share capital of the company.
5. Documents needed to open a corporate bank account
5.1 What are the requirements for opening an individual account? A bank application, corporate documents, KYC documents, proof of source of wealth, profile of UBOs etc.
5.2 What documents are needed in order to open an individual bank account? Same as for corporate.
5.3 Can a bank refuse to open an individual account? If yes, what are the requirements? Yes, a bank can refuse to open an individual account if - for some reason - they don't want the client.
5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)? None.
6. Digital-/Cryptocurrency
6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account. No, cryptocurrency accounts are not allowed in Cyprus.
6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution? There are requirements for recording all financial transactions.
7. Opening an account without proof of Residency
7.1 Can an account be opened without proof of Residency? No, proof of tax and physical residency is required when opening an account.
7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency. Not applicable as proof of residency is required.
8. Recent developments in retail banking
8.1 What recent developments in retail banking have taken place? Further digitalisation, spreading of e-wallets – NFC transactions.
8.2 What retail banking services are offered to customers? All the range, there is no restriction.
9. Recent developments in Anti-Money Laundering (AML) and online banking
9.1 What recent developments in AML and online banking have taken place? Online banking increases in usage and popularity resulting in very detailed and stringent requirements for AML.

Company name: ANH AUDITORS – CONSULTANTS LTD
Country: CYPRUS
Office IP
Office address: 6AB Zenonos Sozou Str, 1075 Nicosia Cyprus
Tel: +357 22 312 400
Fax:
URL: www.anh.com.cy
Author: Andreas Hadjimitsis
e-mail: andreash@anh.com.cy

Company & Author details

ANH Auditors – Consultants Ltd, is a boutique form of Accountants, Auditors, International business consultants licensed and monitored by ICPAC (in collaboration with ACCA UK). What distinguishes ANH is that it combines High Quality with prompt professional service. ANH services a portfolio of both local and international clients. We are particularly strong in international business - consulting with clients ranging from Ukraine to GCC, Egypt, India etc. Consulting services offered include: Business valuations, Feasibility Studies, Start up support, Business development, Strategy etc. Locally we have a reputation of turning companies from problematic to market leaders and we get most of our consulting business from satisfied consulting clients.

Author: Andrea Hadjimitsis



Address: Zenonos Sozou 6ab, 1075 Nicosia Cyprus
Tel: +35722312400
e-mail: andreash@anh.com.cy
LinkedIn URL: <https://www.linkedin.com/in/andreas-hadjimitsis-fcca-65734019/>
Company URL: www.anh.com.cy

Andreas Hadjimitsis FCCA , a Cypriot born and bred, founder and CEO of ANH Auditors – Consultants, an International Business consulting firm and regulated as audit firm by ICPAC in Cyprus. Andreas qualified as Chartered Certified Accountant in UK and then had a career in large audit firms

and later on as CFO in large local and international companies based in Cyprus. In 2009 he set up ANH to provide high quality prompt professional services. Apart from local clients, ANH provides consulting services internationally to clients ranging from Ukraine to UAE, India, Egypt etc.

1. Legal overview - Dubai

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

The Financial Institutions are required to comply with Decretal Federal Law No. (14) of 2018 and its amendment of 2020. This Law requires financial institutions to Comply with the laws of Combating of Terrorist Offences (Decretal Federal Law No (7) of 2014) and Criminalisation of Money Laundering and amendments thereto (Federal Law No (4) of 2002) among others.

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

The Central Bank of the UAE imposes Anti Money Laundering Requirements.

Federal Law No (4) of 2002, Regarding Criminalization of Money Laundering and amendments thereto

and Decretal Federal Law No (7) of 2014, Regarding Combating of Terrorist Offences

- Requirements to implement a risk-based AML program with appropriate customer due diligence (CDD) and screening measures (Know your customer ("KYC") provisions);
- Perform a range of reporting and record-keeping tasks when dealing with suspicious transactions and customers;
- All institutions to appoint Chief Compliance Officer to oversee their firm's AML program and be responsible for arranging audits; including the use of automated tools and technology to enhance AML and KYC compliance;
- Adherence to international based standards ("FATF 40 Recommendations")

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

All Financial Institutions in the UAE are subject to AML Requirements. Other Businesses Include Corporate Services Providers, Gold, Precious Metals and Stones Jewellery Traders, Real Estate Brokers, Law Firms and Auditors and Accountants. There are no cross-border reporting requirements.

1.4 Is an application for a business account with a bank located in your country necessary?

No.

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Yes, please see 1.2 for the requirements.

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a *corporate non-resident* in order to be eligible for a bank account?

No.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

A company must be registered and licensed by a licensing authority and it should be in good standing for it to apply for a bank account.

No, it is not necessary to register with a governmental agency prior to application with the exception of Financial Services Companies which requires a regulator's approval.

1.8 Is cybersecurity and data privacy formally regulated?

Yes.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

For Individuals the Requirements are:

1. Government-issued identification like Passport
2. Emirates ID Card for UAE Nationals and Residents
3. Proof of residence usually through a recent utility bill;
4. Financial Good Standing Reference Letter by any recognised financial institutions or Previous 6 Months Bank Statements
5. Other documents as requested by the banking institution

For Corporates the requirements are:

1. Company trade License/Incorporation Certificate
2. Memorandum and Articles of Association
3. UBO, Shareholder(s) and Manager(s) Profile and Government Issued Identifications
4. Incumbency Letter
5. Local Office Space
6. Share Certificate

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

There is no mandated governmental or legislative banking acceptance policy in the UAE. Each bank has its own acceptance policy as governed under AML-KYC regulations.

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

Yes, banks request for an organisational structure. Information is requested from the client based on the information provided in the KYC documents and the banks can ask for additional documents to satisfy its compliance.

<p>2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?</p> <p>Each application goes through the AECB (Al Etihad Credit Bureau) of the UAE and the banks have subscriptions with fact finding and compliance companies like Thomson Reuters to conduct Enhanced Due Diligence on its clients. Sometimes additional documents are requested from clients to conduct enhanced Due Diligence on New Clients.</p>
<p>2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?</p> <p>No.</p>
<p>2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?</p> <p>Yes.</p>
<p>2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?</p> <p>Commercial Banks and Investment Banks.</p>
<p>2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?</p> <p>No.</p>
<p>3. Process and way of working</p>
<p>3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?</p> <p>Yes, please also see 2.1 for the documents and information to be provided to the bank.</p>
<p>3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?</p> <p>Information required:</p> <ol style="list-style-type: none"> 1. Client Identification Information 2. Business Activities along with a business plan 3. Country of Operations 4. Names of Suppliers and Buyers and their geographical Location 5. Currency Accounts, the frequency of transfers and the volume 6. Source of Wealth 7. Profile of the Shareholder(s) and UBO(s) 8. Expected Turnover

3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.

Yes, cash transactions are allowed. Cash deposits upwards of AED 100,000 require documents to support the source of wealth and requires justification.

3.4 Do the banks require proof of compliance with national and international laws and regulations?

The banks require proof of compliance with national laws and regulations on all transactions.

3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?

Suspicious activities in an account are reported to the Central Bank of the UAE through the goAML system.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

Companies in the UAE are required (as per the Companies Law) to maintain books of accounts and have them audited by an external auditor. Some authorities enforce this requirement while many others do not enforce it. STR (Suspicious Transaction Reporting) should be done immediately through the goAML system.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?

The bank can liquidate an account on non-complicit transactions without prior notification. In majority of the cases the banks do aim to secure clarifications and if its compliance team is not satisfied with the responses and documentary evidences, the bank proceeds to close the bank account or in some scenarios freeze the accounts. There is currently no way to object the decision of the bank or proceed with legal procedure.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

Corporate Bank Account for a local Company:

1. Company Trade License/ Incorporation Certificate
2. Incumbency Letter/Extract of Register
3. Share Certificate
4. Memorandum and Articles of Association
5. Business Plan of Company
6. KYC Questionnaire
7. For Individual Shareholders
 1. Passport copies of Shareholder(s), Director(s)/ Manager(s) and Secretary of Company
 2. Profile of Shareholder(s) and Director(s)/Manager(s) of the Company
 3. Proof of Address of Shareholder(s) and Director(s)/Manager(s)
 4. Last 6 Months Bank Statements of Shareholder(s)
8. For Corporate Shareholders
 1. Company Incorporation Certificate/ Trade License
 2. Incumbency Letter/Extract of Register
 3. Memorandum and Articles of Association

Corporate Bank Account for Non-Local Company (Items 1-6 and 10.1,10.2 and 10.3 are required to be notarised and attested from UAE Embassy in home country and Ministry of Foreign Affairs of the UAE

1. Company Trade License/ Incorporation Certificate
2. Incumbency Letter/Extract of Register
3. Share Certificate
4. Good Standing Letter
5. Resolution Authorising the Signatory
6. Memorandum and Articles of Association
7. Business Plan of Company
8. KYC Questionnaire
9. For Individual Shareholders
 1. Passport copies of Shareholder(s), Director(s)/ Manager(s) and Secretary of Company
 2. Profile of Shareholder(s) and Director(s)/Manager(s) of the Company
 3. Proof of Address of Shareholder(s) and Director(s)/Manager(s)
 4. Last 6 Months Bank Statements of Shareholder(s)
10. For Corporate Shareholders
 1. Company Incorporation Certificate/ Trade License
 2. Incumbency Letter/Extract of Register
 3. Memorandum and Articles of Association

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

Yes, the banks ask for it and the documents required are listed above.

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

The requirements are:

1. Bank Application
2. Profile of Individual
3. KYC Documents (listed below)
4. Source of Wealth

5.2 What documents are needed in order to open an individual bank account?

Documents required are:

1. Passport Copy for Expatriates and an Emirates ID Card for UAE Nationals
2. UAE Residence Visa for Expatriates. A Non-UAE resident can only open a savings account with a bank and not a current account.
3. 6 Months Bank Statements (from any bank previously held by the client), if applicable
4. Resume/ Client Profile
5. Proof of Address
6. Employment Contract Copy, for employees along with Company documents (Company trade License and Immigration Card)
7. For Shareholders/Partners: License, Share Certificate, Memorandum of Association

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

Yes, the bank can refuse to open an individual account in situations where:

1. the client is from a high risk or sanctioned country
2. The client is not able to provide the right due diligence documents
3. The client has a poor credit report

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?

There is no procedure to object the decision. A new application can be made after the concerns of the bank are addressed.

6. Digital-/Cryptocurrency**6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account**

Not yet. The UAE has a draft legislation in place which is not enacted yet

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

The reporting institution for such transactions will be the Central Bank of the UAE.

7. Opening an account without proof of Residency

<p>7.1 Can an account be opened without proof of Residency?</p> <p>No, banks insist on receiving proof of residence in the form of a utility bill or tenancy contract and in some cases a letter from the bank stating the address.</p>
<p>7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.</p> <p>Not Applicable.</p>
<p>8. Recent developments in retail banking</p>
<p>8.1 What recent developments in retail banking have taken place?</p> <p>Digital Banking is the new development in Retail Banking.</p>
<p>8.2 What retail banking services are offered to customers?</p> <p>Checking accounts, savings accounts, personal loans, lines of credit, mortgages, debit cards, credit cards, and Certificate of Deposits.</p>
<p>9. Recent developments in Anti-Money Laundering (AML) and online banking</p>
<p>9.1 What recent developments in AML and online banking have taken place?</p> <p>The Decretal Federal Law No. (14) of 2018 has been amended in 2020. This Law requires financial institutions to Comply with the laws of Combating of Terrorist Offences (Decretal Federal Law No (7) of 2014) and Criminalisation of Money Laundering and amendments thereto (Federal Law No (4) of 2002) among others.</p>

Company name: ADAM GLOBAL CSP
Country: UNITED ARAB EMIRATES
Office IP address:
Office address: 210, BUILDING 4, GOLD & DIAMOND PARK, PO BOX 183827, DUBAI
Tel: +971 4 341 9701
Fax: NA
URL: www.adamglobal.ae

Company & Author details

ADAM Consulting is in business since 2002 and offers complete Market Entry Solution to Expatriates, Entrepreneurs & Foreign Companies interested in expanding in the United Arab Emirates. This includes all aspects of entry planning and feasibility, corporate structuring, growth and exit.

Author: MUHAMMAD MOHSIN ALI



Address: 210, BUILDING 4, GOLD & DIAMOND PARK, DUBAI, UNITED ARAB EMIRATES
Tel: +971 4 3419701
e-mail: mohsin.ali@adamglobal.com
LinkedIn URL: <https://www.linkedin.com/in/m-mohsin-ali/>
Company URL: www.adamglobal.ae
Company LinkedIn URL: <https://www.linkedin.com/company/adam-global/mycompany/>

Mohsin is responsible for development and augmentation of International Business Services which offers tailored solutions to clients that aim to protect their assets and wealth while offering sustainability and growth.

His achievements include the successful setup of 'International Business Services', a new Business segment from concept to profitability - Incorporated 600 new companies in 6 years with a team of 5 people. Mohsin also advised and set up the first Family Office in DIFC for the Company. Developed 2 new revenue streams for the company: DIFC & ADGM Financial Services; and International Partners Development.

Mohsin is currently developing a team to introduce wealth management structures like Trust and Foundations.

1. Legal overview - India

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

Overview of India Banking System

Disclaimer: The materials provided herein are solely for information purposes. No attorney-client relationship is created when you access or use the site or the materials. The information presented on this site does not constitute legal or professional advice and should not be relied upon for such purposes or used as a substitute for legal advice from an attorney licensed in your state.

The Indian banking sector is regulated by the Reserve Bank of India Act 1934 (RBI Act) and the Banking Regulation Act 1949 (BR Act). The Reserve Bank of India (RBI), India's central bank, issues various guidelines, notifications and policies from time to time to regulate the banking sector. In addition, the Foreign Exchange Management Act 1999 (FEMA) regulates cross-border exchange transactions by Indian entities, including banks.

Anti-money laundering (AML) refers to the laws, regulations and procedures intended to prevent criminals from disguising illegally obtained funds as legitimate income. The Prevention of Money Laundering Act, 2002 is an Act of the Parliament of India enacted by the NDA government to prevent money-laundering and to provide for confiscation of property derived from money-laundering.

CONTROLS AND REGULATIONS

- Securities Exchange Act of 1934
- Securities and Exchange Commission (SEC)
- Financial Crimes Enforcement Network (FinCEN)
- Anti Money Laundering (AML)
- Compliance Department
- Compliance Officer

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

The prime objective of the **Enforcement Directorate** is the enforcement of two key Acts of the Government of India namely, the Foreign Exchange Management Act 1999 (FEMA) and the Prevention of Money Laundering Act 2002 (PMLA).

Requirements:

The applicant must comply with the Bank Secrecy Act and its implementing regulations ("AML rules"). The purpose of the AML rules is to help detect and report suspicious activity including the predicated offenses to money laundering and terrorist financing, such as securities fraud and market manipulation.

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

Anti-money Laundering (AML) compliance in India is an important requirement to ensure that the financial system is not used to launder illegal proceeds and finance terrorism. Therefore all financial institutions are subject to AML requirements. The Prevention of Money Laundering Act, 2002 (PMLA), together with the rules and regulations prescribed by regulators such as the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI) and Insurance Regulatory and Development Authority of India (IRDAI), sets out the broad AML framework in India.

Transfer pricing law in India applies to both domestic and international transactions which fall above a threshold in terms of deal value. Transfer Pricing was introduced through inserting Section(s) 92A-F and relevant Rule(s) 10A-E of the Income Tax Rules 1962.

It ensures that the transaction between 'related' parties is at a price that would be comparable if the transaction was occurring between unrelated parties.

Following this law the parties engaging in cross-border transactions must fulfil the set requirements. Please contact us for more / detailed information regarding the cross-border reporting requirements.

1.4 Is an application for a business account with a bank located in your country necessary?

Yes, an application for a business account with a bank located in India is necessary.

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Yes, under the Bank Secrecy Act the Indian banks are implementing regulations ("AML rules the purpose of which is to help detect and report suspicious activity including the predicated offenses to money laundering and terrorist financing, such as securities fraud and market manipulation.

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a *corporate non-resident* in order to be eligible for a bank account?

No, a registration is not necessary.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

There are no other legal requirements that need to be met in order to be eligible for a bank account. There is no necessity to register with a governmental agency prior to an application.

1.8 Is cybersecurity and data privacy formally regulated?

The main legislation governing cyberspace is the Information Technology Act, 2000 ("IT Act") which defines cybersecurity as protecting information, equipment, devices, computer, computer resource, communication devices and information stored therein from unauthorized access, use, disclosure, disruption, modification or destruction.

In addition to providing legal recognition and protection for transactions carried out through electronic data and other means of electronic communication, the IT Act and various rules made there under, also focus on information security, defines reasonable security practices to be followed by corporates and redefines the role of intermediaries, recognizes the role of the Indian Computer Emergency Response Team (“CERT-In”) etc.

Additionally, the IT Act also amended the scope of Indian Penal Code, Indian Evidence Act, 1872, The Bankers’ Books Evidence Act, 1891, and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto, which were focusing on the regulation of the overly sensitive banking and financial services sector.

Incidentally, while there is no comprehensive legislation for the governance of data in the country as on this date, there are sectoral legislations, directions, legal advisories which require specific compliance for the targeted sector.

The IT Act not only extends to the whole of India and, but it is also applicable to any offence or contravention committed outside India by any person. Additionally, the legal sanctions under the IT Act extend to imprisonment, penalties, and also allow for a framework for compensation/ damages to be paid to the claimants.

Further, if a body corporate, possessing, dealing or handling any personal data or sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate is liable to pay damages by way of compensation to the person so affected.

Some Relevant Rules Framed under the IT Act:

Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules 2013 (“CERT Rules”)

As per the CERT Rules, CERT-In has been established as the nodal agency responsible for the collection, analysis and dissemination of information on cyber incidents and taking emergency measures to contain such incidents.

Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules 2011 (“SPDI Rules”)

These SPDI Rules strictly govern the corporate entities that collect and process sensitive personal information in India.

THE PERSONAL DATA PROTECTION BILL, 2019

In December 2019, a new iteration of the data privacy and protection legislation was introduced, titled the Personal Data Protection Bill 2019 (“PDP Bill”). Section 24 of the PDP Bill directs data fiduciaries (data controller as per the PDP Bill terminology) to implement safeguards for several purposes, including to prevent misuse, unauthorized access to, modification, disclosure, or destruction of personal data. Further, Section 25 deals with the breach of personal data. The clause states that in cases where a data breach may cause harm to the data principal, the data fiduciary must inform the envisaged Data Protection Authority.

In the wake of the growing concerns around privacy and cybersecurity, threats (including political opportunities) are being evaluated by the government and prohibitions pertaining to vulnerable

parts of the population (children) and high-risk applications (including e-commerce platforms) have been implemented.

COMBATING CYBER CRIME IN AN INTERCONNECTED WORLD

One of the most relevant references of these times that can be made in the current scenario, is the overbearing dependence of the corporate world on Zoom, which led to a great number of people crashing into 'office meetings/ Zoom parties', disrupting the flow of a particular session. Increasingly, individuals, corporates moved from the platform, to [apparently] stricter platforms for work related calls. Even inter-governmental bodies like the European Commission moved away from Zoom, for work related calls, in the wake of this cyber-threat.

Also, because of the seeming incursion of Chinese digital platforms into the ubiquitous web, countries like the United States of America, and India, quickly moved towards banning Chinese apps.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

The formal requirements that need to be met in order to open a bank account in India are mostly documentary.

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

Not Applicable

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes.

The decision is taken by the Compliance department of the banks.

2.4 Are banks required to obtain the organizational structure of their (potential) clients? What further information is to be provided (e.g. the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

Yes.

Banks are required to obtain the organizational structure of their potential clients. Banks may raise queries with regards to the application for a bank account. Queries may vary depending on the source of funds, business activity and/or target countries. Thus, banks may raise any query.

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

Please see Q3.1 for the Due Diligence / KYC process.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

There are no specific prohibitions on the types of financial institutions.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

Yes, it is maintained and available to government authorities.

For opening an account of a Legal Person who is not a natural person, the beneficial owner(s) shall be identified and all reasonable steps in terms of sub-rule (3) of Rule 9 of the Rules to verify his/her identity shall be undertaken keeping in view the following:

1. Where the customer or the owner of the controlling interest is a company listed on a stock exchange, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.
2. In cases of trust/nominee or fiduciary accounts whether the customer is acting on behalf of another person as trustee/nominee or any other intermediary is determined. In such cases, satisfactory evidence of the identity of the intermediaries and of the persons on whose behalf they are acting, as also details of the nature of the trust or other arrangements in place shall be obtained.

2.8 What type of banking institutions are there in your country (e.g. commercial banks / savings banks / credit unions / mortgage banks)?

All

2.9 Are there banking institutions which are not available for certain types of customers (e.g. not for businesses / not for individuals)?

No

All banking institutions are available for both businesses and individuals.

3. Process and way of working

3.1 Are the banks obliged to follow certain processes (e.g. Know Your Client (KYC) or Customer Due Diligence (CDD)?

Yes

Enhanced Due Diligence

Accounts of non-face-to-face customers (other than Aadhaar OTP based on-boarding): Regulating Entities (Res) shall ensure that the first payment is to be effected through the customer's KYC-complied account with another RE, for enhanced due diligence of non-face-to-face customers.

Accounts of Politically Exposed Persons (PEPs)

A. REs shall have the option of establishing a relationship with PEPs provided that:

1. sufficient information including information about the sources of funds accounts of family members and close relatives is gathered on the PEP;
2. the identity of the person shall have been verified before accepting the PEP as a customer;
3. the decision to open an account for a PEP is taken at a senior level in accordance with the REs' Customer Acceptance Policy;
4. all such accounts are subjected to enhanced monitoring on an on-going basis;
5. in the event of an existing customer or the beneficial owner of an existing account subsequently becoming a PEP, senior management's approval is obtained to continue the business relationship;
6. the CDD measures as applicable to PEPs including enhanced monitoring on an on-going basis are applicable.

B. These instructions shall also be applicable to accounts where a PEP is the beneficial owner

Client accounts opened by professional intermediaries:

REs shall ensure while opening client accounts through professional intermediaries, that:

1. Clients shall be identified when a client account is opened by a professional intermediary on behalf of a single client.
2. REs shall have the option to hold 'pooled' accounts managed by professional intermediaries on behalf of entities like mutual funds, pension funds or other types of funds.
3. REs shall not open accounts of such professional intermediaries who are bound by any client confidentiality that prohibits disclosure of the client details to the RE.
4. All the beneficial owners shall be identified where funds held by the intermediaries are not co-mingled at the level of RE, and there are 'sub-accounts', each of them attributable to a beneficial owner, or where such funds are commingled at the level of RE, the RE shall look for the beneficial owners.
5. REs shall, at their discretion, rely on the 'customer due diligence' (CDD) done by an intermediary, provided that the intermediary is a regulated and supervised entity and has adequate systems in place to comply with the KYC requirements of the customers.
6. The ultimate responsibility for knowing the customer lies with the RE.

B. Simplified Due Diligence

Simplified norms for Self Help Groups (SHGs)

1. CDD of all the members of SHG shall not be required while opening the savings bank account of the SHG.
2. CDD of all the office bearers shall suffice.

3. Customer Due Diligence (CDD) of all the members of SHG may be undertaken at the time of credit linking of SHGs.

3.2 What kind of information do the banks request from (potential) clients (e.g. information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?

The information the banks request from clients are the ones mentioned as examples below.

1. Passport no
2. proof of address
3. bank reference letter

information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is.

3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on it's accounts? If yes, please describe/provide examples.

Yes, but subject to the provisions of Income Tax Act, 1961.

In the Indian economy, cash transactions have always played a major role and serve as a consistent reason for the accumulation of black money. The Government has recently initiated various measures to curb cash transactions and boost digital payments.

The Finance Act 2017, took various measures to restrain black money and as an outcome of these measures, a new Section 269ST was inserted in the Income Tax Act which imposes restriction on a cash transaction and limited it to Rs.2 Lakhs per day. It also states that no person shall receive an amount of Rs 2 Lakh or more:

- In aggregate from a person in a day; or
- In respect of a single transaction; or
- In respect of transactions relating to one event or occasion from a person.

However, the Central Board of Direct Taxes (CBDT) has clarified that this cash withdrawal limit does not apply for withdrawals from Banks and Post offices.

Please feel free to contact us for more information about the provisions of Income Tax Act, 1961 as well as the Finance Act 2017 or the penalties imposed in case of failure to comply with these acts.

3.4 Do the banks require proof of compliance with national and international laws and regulations?

Yes, the bank may require the same.

3.5 Do banks have to report transactions which do not comply in all respects with the regulations developed? If yes, to which institutions?

Yes, Rule 8 of Notification No. 9/2005 dated 1-7-2005 requires the Principal Officer of a banking company to furnish the information of the suspicious transactions to the Director, Financial Intelligence Unit (FIU-IND) not later than three working days from the date of occurrence of such transactions.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

Yes, there are requirements for recordkeeping and reporting of large currency transactions.

Prevention of Money Laundering Act, 2002 – Obligation of banks in terms of Rules notified there under the circular RPCD.CO. RRB.AML.BC.68/ 03.05.33(E)/2005-06 dated March 9, 2006. In Paragraph 3 of the said circular, it was advised that banks are required to maintain and preserve information in respect of transactions with its client referred to in rule 3 in hard and soft copies. It is further clarified that bank should also report information in respect of all transactions referred to in Rule 3 ibid to the Director, Financial Intelligence Unit-India (FIU-IND).

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g. objection procedure / legal procedure)?

No. This order can only be given by a court of law.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

The following documents are required for a corporate bank account:

- Photo ID proof of the Director of the Entity (i.e., Passport., PAN Card)
- Address Proof of the Director / Partners of the Entity (i.e., Driving License, Voter Identity Card)
- Incorporation certificate or official registration certificate
- Current company status certificate- Certificate of good standing
- Articles and Memorandum of Associations of the Entity
- Details of Directors and shareholders (with more than 20% shares)
- Copy of Board Resolution (authorizing opening of the Account)
- Other Documents [i.e. National Identification Card - e.g. Aadhaar card issued by Unique Identification Authority of India (UIDAI) ;Senior Citizen Card issued by State/Central Govt.]
- Bank Account Opening Forms (specific to bank selected)

For Foreigners, All the documents mentioned above must be apostilled or notarized from the Judicial authority in the specific country or the Indian Embassy in that specific country.

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification of the organizational structure (e.g. Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

Yes, a bank can request all of the mentioned examples above

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

Documents required to be submitted by an individual are as follows:

- Passport
- PAN card
- Voter's Identity Card
- Driving License
- Job Card issued by NREGA duly signed by an officer of the State Government
- Letter issued by the Unique Identification Authority of India (UIDAI) containing details of name, address and Aadhaar number.

For Foreigners, All the documents mentioned above must be apostilled or notarized from the Judicial authority in the specific country or the Indian Embassy in that specific country.

5.2 What documents are needed in order to open an individual bank account?

Similar as 5.1

- Passport
- PAN card
- Voter's Identity Card
- Driving License
- Job Card issued by NREGA duly signed by an officer of the State Government
- Letter issued by the Unique Identification Authority of India (UIDAI) containing details of name, address and Aadhaar number.

For Foreigners, All the documents mentioned above must be apostilled or notarized from the Judicial authority in the specific country or the Indian Embassy in that specific country.

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

A bank or credit union may refuse to open a checking account for someone who cannot provide the identification that it requests.

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g. objection / legal procedure)?

There is no legal procedure. It is at the total discretion of a bank to accept or refuse the opening of bank accounts. Upon rejection, one can only request the bank to reconsider the application if new information is provided.

6. Digital-/Cryptocurrency

6.1 Are accounts for cryptocurrency allowed? If yes, is such a cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.

Cryptocurrency is not issued or guaranteed by the bank. Users of cryptocurrencies are exposed to risks. Exchange platforms for cryptocurrencies are unregulated. The bank will not accept any responsibility in case of any loss which members of the public may incur on account of any dealing in unregulated cryptocurrencies.

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

Not Applicable

7. Opening an account without proof of Residency

7.1 Can an account be opened without proof of Residency?

No, a proof of residency is required.

7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.

No account can be opened without proof of residency.

8. Recent developments in retail banking

8.1 What recent developments in retail banking have taken place?

List of Top 10 retail banking industry trends in India:

- Digital Transformation
- Cybersecurity and Data Privacy
- Cloud Computing
- Green and Sustainable Banking
- Banking-as-a- Service (BaaS)
- Workforce Transformation
- Non-Financial Risk (NFR) Management
- Distributed Ledger Technology

8.2 What retail banking services are offered to customers?

Retail banking, also known as consumer banking or personal banking, is the provision of services by a bank to the general public, rather than to companies, corporations or other banks, which are often described as wholesale banking. Banking services which are regarded as retail include provision of **savings and transactional accounts, mortgages, personal loans, debit cards, and credit cards**. Retail banking is also distinguished from investment banking or commercial banking. It may also refer to a division or department of a bank which deals with individual customers.

Typical retail banking services offered by banks include:

- Transactional accounts. Checking accounts (American English) Current accounts (British English)
- Savings accounts.
- Debit cards.
- ATM cards.
- Credit cards.
- Traveler's cheques.
- Mortgages.
- Home equity loans.

9. Recent developments in Anti-Money Laundering (AML) and online banking**9.1 What recent developments in AML and online banking have taken place?**

No recent amendments.

10. Any points to observe?**Customer Identification Procedure****Features to be verified and documents that may be obtained from customers**

Features	Documents
Accounts of individuals <ul style="list-style-type: none">• Legal name and any other names used• Correct permanent address	(i) Passport (ii) PAN card (iii) Voter's Identity Card (iv) Driving licence(v) Identity card (subject to the bank's satisfaction) (vi) Letter from a recognized public authority or public servant verifying the identity and residence of the customer to the satisfaction of bank (i) Telephone bill (ii) Bank account statement (iii) Letter from any recognized public authority(iv) Electricity bill (v) Ration card(vi) Letter from employer (subject to satisfaction of the bank) (any one document which provides customer information to the satisfaction of the bank will suffice)

<p>Accounts of companies</p> <ul style="list-style-type: none"> • Name of the company • Principal place of business • Mailing address of the company • Telephone/Fax Number 	<p>(i) Certificate of incorporation and Memorandum & Articles of Association (ii) Resolution of the Board of Directors to open an account and identification of those who have authority to operate the account (iii) Power of Attorney granted to its managers, officers or employees to transact business on its behalf (iv) Copy of PAN allotment letter (v) Copy of the telephone bill</p>
<p>Accounts of partnership firms</p> <ul style="list-style-type: none"> • Legal name • Address • Names of all partners and their addresses • Telephone numbers of the firm and partners 	<p>(i) Registration certificate, if registered (ii) Partnership deed (iii) Power of Attorney granted to a partner or an employee of the firm to transact business on its behalf (iv) Any officially valid document identifying the partners and the persons holding the Power of Attorney and their addresses (v) Telephone bill in the name of firm/partners</p>
<p>Accounts of trusts & foundations</p> <ul style="list-style-type: none"> • Names of trustees, settlers, beneficiaries and signatories • Names and addresses of the founder, the managers/directors and the beneficiaries • Telephone/fax numbers 	<p>(i) Certificate of registration, if registered (ii) Power of Attorney granted to transact business on its behalf (iii) Any officially valid document to identify the trustees, settlers, beneficiaries and those holding Power of Attorney, founders/managers/ directors and their addresses (iv) Resolution of the managing body of the foundation/association (v) Telephone bill</p>

Company & Author details

Company name: Ardent Legal (Advocates & Solicitors)

Country: India

Office IP address:

Office address: G-58, Nizamuddin (West), New Delhi – 110013, India

Tel: +91 – 11 - 4052 8452 - 53

Fax: 813-5405-3305

URL: <https://www.ardentlegal.in/>

Author: Akshay Sapra

e-mail: akshay@ardentlegal.in

Ardent Legal is a law firm offering a full-service practice to its clients in various spheres of law. Lawyers of the Firm present a proper blend of legal proficiency and commercial insight required in providing legal and transactional support services. The Firm has its principal office in New Delhi and a Pan-India presence.

Our specialized practice is aimed at assisting clients in establishing their presence in different parts of India and abroad. We assist clients through their legal corporate journey along with assisting in their commercial legal agreements and contracts, Intellectual Property (IP) Laws, Company Law (NCLT) matters, commercial & industrial dispute, Disputes Resolution through Litigation or Arbitration (Domestic & International), Insurance Matters, Corporate compliances, Intellectual property rights, Corporate & Land due diligence, acquisition of real estate for new establishments, Corporate & Business restructuring, CSR Regulations & Compliance, Foreign Trade Policy & FEMA Laws, Mining laws and Customs/Excise laws. Besides full litigation support across courts, forums & tribunals across India, the Firm focuses on providing to its client's day-to-day advice on commercial transactions and contractual matters.

Author: Akshay Sapra, Partner at Ardent Legal (Advocates & Solicitors)



Office address: G-58, Nizamuddin (West), New Delhi – 110013, India

Tel: +91 – 11 - 4052 8452 - 53

e-mail: akshay@ardentlegal.in

LinkedIn URL: <https://www.linkedin.com/in/akshay-sapra-70469511>

Company URL: <https://www.ardentlegal.in/>

Company LinkedIn URL: <https://www.linkedin.com/company/ardent-legal-advocates-&-solicitors->

Akshay Sapra is an attorney-at-law and partner at Ardent Legal (Advocates & Solicitors).

He has an experience of more than 12 years which extends to wide-range areas such as Project Financing, Real Estate & Infrastructure, Arbitration and Dispute Resolution, Insolvency & Bankruptcy.

He is a member of International Bar Association, INSOL (A Worldwide Association of Insolvency Professionals), Asia Pacific Jurist Association (APJA), Global Legal and Economic Development Council (GLEDCON), Legal & Economic Development Forum (LEDFOR), Society for Consensual Dispute Resolution (SCDR), SAARC-Law, Supreme Court Bar Association, India and Delhi High Court Bar Association.

1. Legal overview – Japan
<p>1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?</p> <p>Act on Prevention of Transfer of Criminal Proceeds, Foreign Exchange and Foreign Trade Act, Ordinance for Enforcement of the Act on Special Measures Concerning Freezing of Property of International Terrorists, etc. implemented by Japan based on United Nations Security Council Resolution No. 1267, etc., Act on Punishment of Financing to Offences of Public Intimidation Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties, Guideline issued by Financial Service Agency, etc.</p>
<p>1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.</p> <p>National Public Safety Commission, Financial Service Agency, Tax Authorities, Police, etc.</p>
<p>1.2 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements.</p> <p>Financial institutions including bank, insurance company, securities company, trustee, etc. and real estate agency, lawyer, tax accountant, accountant, judicial scrivener, administrative scrivener, etc. Japan is a member of Common Reporting Standards</p>
<p>1.4 Is an application for a business account with a bank located in your country necessary?</p> <p>Yes</p>
<p>1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)</p> <p>Yes, the banks need to know whether the transaction is related to a criminal activity and if suspicious, should report to the authorities. Also, the banks should know the beneficial owner of the transaction.</p>
<p>1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a <i>corporate non-resident</i> in order to be eligible for a bank account?</p> <p>A non-resident corporate cannot open a bank account if its representative is non-resident in Japan. A registration with the Chamber of Commerce or similar registrar is irrelevant.</p>
<p>1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?</p> <p>As to many banks, the representative of a non-resident corporate should be a resident more than 3 months in Japan to open a bank account whose usage is very limited and should be a resident more than 6 months to open a bank account of normal type.</p>
<p>1.8 Is cybersecurity and data privacy formally regulated?</p> <p>Yes. There is The Basic Act on Cybersecurity and Act on the Protection of Personal Information in Japan.</p>
2. Formal requirements
<p>2.1 What formal requirements need to be met in order to open a bank account?</p> <p>Under AML, the banks need to know (1) person-specific matters (the name, residence and date of birth for individuals, and the name and the location of the head office or main office for corporations), (2) purpose of trading, (3) occupation for individuals, and business content for corporations, (4) person-specific matters of the ultimate beneficial owners for corporations.</p>
<p>2.2 What strict legislation and individual acceptance policy needs to be taken into account?</p>

High risk transactions, such as a transaction with a resident in Iran or North Korea or Politically exposed persons are strictly scrutinized. In case of high-risk transactions, the (potential) clients need to provide a list of shareholders, etc. to prove the ultimate beneficial owners. Also, in case of high-risk transactions transferring property more than JPY2,000,000 (around USD18,000), the (potential) clients' assets and/or income should be additionally scrutinized to the extent necessary for deciding whether reporting it as a suspicious transaction.
2.3 Do the banks have to look very carefully at each application before they can make a decision? Yes.
2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.) The banks will want their (potential) clients to provide organizational structure to know the ultimate beneficial owners or decide whether such transaction is a suspicious one which should be reported.
2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers? Same as 2.1 and 2.2.
2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition? The banks will reject to open an account for foreign shell companies common-sensibly.
2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities? No.
2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)? Central bank of Japan, commercial banks, trust banks, Investment banks, private banks, credit unions, consumer finance companies, finance lease companies, securities companies, insurance companies, factoring companies, mortgage securities companies, call loan dealer, pawn shop, etc.
2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)? Clients of Bank of Japan and investment banks are companies. Clients of private banks are those who have more than a certain amount of property. Call loan dealer deal with interbank business.
3. Process and way of working
3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)? Yes.
3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)? Same as 2.1. The banks should report to the authorities if they find suspicious transactions related to a criminal activity and therefore, they will want to know relevant information such as the countries where (potential) clients operate or the origin of assets/funds, etc.

<p>3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.</p> <p>Yes. The banks will need to know the information as stated in 2.1 if (potential) clients transfer cash more than JPY 100,000 (around USD900).</p>
<p>3.4 Do the banks require proof of compliance with national and international laws and regulations?</p> <p>Probably generally no because it is difficult for (potential) clients to show such proof except their affidavit. However, if the banks find any incompliance related to AML or other crimes, they will report to the authorities.</p>
<p>3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?</p> <p>Yes, the banks should report to Chief of Financial Services Agent if they find suspicious transactions.]</p>
<p>3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?</p> <p>Yes. If the banks find cross-border transfers more than JPY 1,000,000 (around USD9,000), they should report to the tax authorities.</p>
<p>3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?</p> <p>The banks usually conclude terms and conditions to be able to liquidate such accounts without prior notification. Act on Payment of Damage Recovery Benefits from Funds in Deposit Accounts Used for Crime provides such liquidation of an account used for certain crimes with prior public notice. The account holder can make an objection by proving his/her account is not used for such crimes</p>
<p>4. Corporate bank account</p>
<p>4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?</p> <p>As stated in 2.1, for corporations to open a bank account, the banks need to know (1) person-specific matters (the name and the location of the head office or main office), (2) purpose of trading, (3) business content, (4) person-specific matters (the name, residence and date of birth) of the ultimate beneficial owners by AML.</p> <p>Therefore, the banks will request documents relevant to them. However, what concrete documents are necessary depends on the banks.</p> <p>Regarding (3): the contents of the business are confirmed by the method of confirming one of the following documents according to the ordinance of the competent ministry, (i) Articles of Incorporation, (ii) documents that are required to be prepared by the corporation according to the provisions of laws and regulations, and that describe the contents of the business of the corporation, (iii) Certificate of registration pertaining to registration of establishment of the corporation (when the corporation has not registered the establishment, documents proving the contents of the business of the corporation by the head of the administrative agency having jurisdiction over the corporation) and (iv) documents issued by government offices and similar documents that describe the business of the corporation.</p>
<p>4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure</p>

<p>(e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?</p> <p>Yes, as stated in 4.1.</p>
<p>5. Documents needed to open a corporate bank account</p>
<p>5.1 What are the requirements for opening an individual account?</p> <p>Concerning many banks, the (potential) clients should be a resident more than 3 months in Japan to open a bank account whose usage is very limited and should be a resident more than 6 months to open a bank account of normal type.</p>
<p>5.2 What documents are needed in order to open an individual bank account?</p> <p>As stated in 2.1, for individuals to open a bank account, the banks need to know (1) person-specific matters (the name, residence and date of birth), (2) purpose of trading, (3) occupation. Therefore, the banks will request documents relevant to them. However, what concrete documents are necessary depends on the banks. Such documents include, without limiting to, residence card, passport, health insurance card, special permanent resident certificate, driver's license, student ID, and employee ID, utility bill (gas, electricity, water, etc.</p>
<p>5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?</p> <p>Yes. Basically, banks are not obligated to open an account for anyone. There are no legal requirements to refuse it.</p>
<p>5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?</p> <p>Potential clients will usually lose although they can initiate a legal action.</p>
<p>6. Digital-/Cryptocurrency</p>
<p>6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.</p> <p>Yes, for both companies and individuals. The requirements by AML are same as those to open a bank account stated in 2.1 and 2.2</p>
<p>6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?</p> <p>Yes. If the amount of cross-border cryptocurrency transaction is more than JPY 30,000,000 (around USD270,000), clients should report to Minister of Finance.</p>
<p>7. Opening an account without proof of Residency</p>
<p>7.1 Can an account be opened without proof of Residency?</p> <p>Non-Resident cannot open a bank account.</p>
<p>7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.</p> <p>Not applicable.</p>
<p>8. Recent developments in retail banking</p>

8.1 What recent developments in retail banking have taken place?

Online banking via digital channels such as online or mobile tool.

8.2 What retail banking services are offered to customers?

Asset management, asset conservation, consumer loan, card loan, housing loan, business succession, etc.

9. Recent developments in Anti-Money Laundering (AML) and online banking**9.1 What recent developments in AML and online banking have taken place?**

With the development of online banking, threatening of ML is increasing. The Financial Services Agency recently pointed out that it should be borne in mind that it is necessary to take measures based on the risk of non-face-to-face transactions, such as the possibility of spoofing or false statements of person-specific matters of transaction in view of risk assessment of and mitigation measures for AML and CFT and such measures include finding suspicious / unnatural access by utilizing (i) the terminal information such as IP address, browser language, time difference setting or combination information of User Agent (for example, OS / browser combination information) and (ii) the image resolution, etc.

Company & Author details

The CAST GROUP provides a one-stop service in a wide range of fields in order to lead companies and individuals to achieve success in Asian countries such as Japan, China (including Hong Kong and Taiwan), Vietnam and Myanmar. Legal Profession Corporation CAST provides high quality one-stop legal, accounting and tax services to international clients.

Over the past ten years, the group has gained tremendous success mainly by providing support for Japanese companies to advance into and retreat from China. The group is able to show fully its strength of the broad experience, know-how and expertise concerning cross-border transactions among many Asian countries

Author: Masato Shibata



Address: Legal Profession Corporation Cast Global
Atago Green Hills MORI Tower 34F
2-5-1, Atago Minato-ku, Tokyo 105-6234 JAPAN
Tel: 813-5405-7850
e-mail: shibata@castglobal.com
LinkedIn URL: <https://www.linkedin.com/in/masato-shibata-105591132/>
Company URL: <https://cast-group.biz/group/law/>

Masato Shibata is attorney-at-law and a partner of Legal Profession Corporation Cast Global. He is admitted in Japan and New York. He graduated from Tokyo University and has a LL.M degree from New York University. He is a STEP (The Society of Trust and Estate Practitioners) member of the Hong Kong branch.

His experience as a lawyer is more than 25 years and extends to wide-ranging areas such as cross-border transactions, IPO, corporate, M&A, litigation and family matters. He has worked at the M&A department of Daiwa Securities SMBC.

1. Legal overview - Kenya

1.1 What laws and regulations are to be complied with (e.g. Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

The main laws and regulations that regulate Kenyan banking system are as follows:

- Banking Act (CAP. 488)
- Central Bank of Kenya Act (CAP. 491)
- Microfinance Act (No. 19 of 2006)
- National Payment System (No. 39 of 2015)
- Kenya Deposit Insurance Act (No. 10 of 2015)
- Proceeds of Crime and Anti-Money Laundering (No. 9 of 2009)
- Prevention of Terrorism Act (No. 30 of 2012)
- Prevention of Fraud (Investments) Act (No. 1 of 1977)
- Narcotic Drugs & Psychotropic Substances (Control) Act (1994)
- Prudential Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism (by the Central Bank of Kenya)

The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) establishes the Financial Regulations Centre (FRC), the Assets Recovery Agency (ARA) and the Anti-Money Laundering Advisory Board.

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

The Financial Reporting Centre is the primary institution established by POCAMLA to assist in the identification of the proceeds of crime and the combating of money laundering and the financing of terrorism. It serves as the Financial Intelligence Unit in Kenya and is empowered to impose civil penalties for non-compliance with the Act.

Kenya is party to several Conventions and a member of Inter-governmental and international organizations which collectively form part of the sources of international laws regulating money laundering and combating financing of terrorism.

International conventions on money laundering that Kenya is a party to are as follows:

- United Nations Convention against Transnational Organized Crime (known as the Palermo Convention)
- United Nations Convention against Corruption (Merida Convention)
- International Association of Insurance Supervisors (IAIA)
- The Basel Accords

Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) – a Financial Action Task Force -Style Regional Body (FATF -FSRB)

The primary legislation that governs anti-money laundering principles in Kenya are as follows:

- Proceeds of Crime and Anti-Money Laundering Act 2009 (Revised in 2019)
- Proceeds of Crime and Anti-Money Laundering Regulations (2013)
- Prevention of Terrorism Act (2012)
- Prevention of Terrorism Regulations (2013)
- Legal Notice (Criminal Assets Recovery Fund)

The POCAMLA Law governs the following obligations:

- Establish and maintain customer records

- Verify customer identity
- Establish and maintain internal reporting procedures
- Register with FRC
- Reporting of suspicious transactions including attempted transactions to FRC
- Reporting on cash transactions exceeding US\$ 10,000 or its equivalent in any other currency
- Requirement to submit to the FRC an annual report (by January 31st of the following year) indicating the institutional level of compliance with the Act and related regulations.

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

Reporting institutions are defined in the Proceeds of Crime and Anti-Money Laundering Act and include Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBPs). The Act prescribes obligations for Reporting Institutions including putting measures in place to combat money laundering, registering with the Financial Reporting Centre, and submitting specified reports to the Centre.

A reporting institution may fall in a business sector with or without a regulator. Where a sector is regulated, the Financial Reporting Centre works closely with the regulator in ensuring the regulated institutions properly implement their anti-money laundering obligations. In sectors where there is no regulator, the Financial Reporting Centre engages directly with the reporting institutions.

The regulators are:

- a) Central Bank of Kenya
- b) Capital Markets Authority
- c) Insurance Regulatory Authority
- d) Betting Control and Licensing Board
- e) NGO Coordination Board
- f) Institute of Certified Public Accountants of Kenya
- g) Estate Agents Registration Board
- h) Retirement Benefits Authority

The following are sectors which are not regulated but whose institutions are nonetheless reporting institutions:

- i) Motor Vehicle Dealerships
- j) Real Estate
- k) Dealers in Precious Metals
- l) Dealers in Precious Stones

1.4 Is an application for a business account with a bank located in your country necessary?

As a general principle, it's not mandatory for a registered company to have a bank account particularly if the company is new and yet to start trading or is dormant.

1.5 Are the banks obliged to scrutinize applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Yes, the banks are obliged to scrutinize applications thoroughly to comply with the banking laws and regulations. The ultimate responsibility in ensuring compliance to this is placed on the Board of

Directors of a banking institution operating in Kenya which is expected to ensure that the management obtains, maintains and ensures proper identification of customers wishing to open accounts or make transactions whether directly or through proxy. The board is also required to do the following: maintain adequate records for a minimum period of seven years regarding the sources of funds and details of transactions; train staff on a regular basis in the prevention, detection and control of money laundering and the identification of suspicious transactions; submit to the CBK a report of any suspicious transactions or activities that may indicate money laundering or other attempts to cover the true identity of customers or ownership of assets and establish adequate internal control measures which will assist in the prevention and detection of money laundering activities. The CBK also prohibits the institutions from opening and the maintaining of anonymous accounts or accounts in obvious fictitious names.

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?

Registration to the Chamber of Commerce is not required for opening a bank account by a corporate non-resident.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

The existing legislation requires bank and financial institutions to abide by the KYC requirements. This mandate, when implemented, should identify and verify the bank account applicant before the bank starts to conduct business with the customer.

1.8 Is cybersecurity and data privacy formally regulated?

Yes. Kenya passed comprehensive data protection legislation – the Data Protection Act of 2019 which was assented to by the President of the Republic of Kenya on 8 November 2019. The Act brings into play comprehensive laws that protect the personal information of individuals. It established the Office of the Data Protection Commissioner, made provision for the regulation of the processing of personal data, provided for the rights of data subjects and obligations of data controllers and processors.

The law also makes provisions for the following among others:

- Registration of Data Controllers and Data Processors - All data controllers and data processors are required to be registered with the Commissioner as per the thresholds provided by the Commissioner.
- Data Protection - Every data controller or processor whether resident in or outside Kenya is required to ensure that all personal data is processed lawfully, fairly and in a transparent manner in relation to any data subject.
- Storage of Data - There are no prescribed durations for the retention of personal data. Data controllers and processors are required to apply a reasonableness test in assessing retention durations.
- Sensitive Data - Specific provisions apply to the collection, storage and processing of data that reveals race, health status, ethnic social origin, conscience, belief, genetic data, biometric data, property details, marital status, family details including names of children, parents, spouse or spouses, sex or the sexual orientation.
- Transfer of Personal Data Outside Kenya - Data controllers and processors are only permitted to transfer personal data to another country after they have given proof to the Commissioner on the appropriate safeguards with respect to the security and protection of the personal data.
- Exemptions - General exemptions from the provisions of the Act apply in cases where publication of data would be in the public interest, for journalism, literature and art, research, history and statistics (all under specific circumstances).

- Enforcement - Offences under the Act attract a fine of up to KES5-million and/or a term of imprisonment of up to ten years.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

Financial institutions are required to identify and verify the bank account applicant before the bank starts to conduct business with the customer. This identification is dependent on the nature of the applicant. Typically for a corporate, the following is required:

- Must be registered in Kenya as per the Kenya Companies Act 2015 with a valid Certificate of Incorporation and Memorandum and Articles of Association.
- Registered as a tax payer and provide a KRA Pin Certificate or Tax-Exempt Certificate for the Company.
- Audited financial statements of the Company for the last full year – not required for new Companies.
- Identification documents of all directors of the Company and any Shareholders owning 25% or more. A list of Directors and Shareholders of the company (Form CR.12) provided by the Registrar of Companies.

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

The obligation to accept or not to accept an applicant is upon the regulated financial institution. Each bank therefore has in place its own mechanism that meets the minimum requirements to accept an application. Therefore, the financial institution is required to fully identify and verify the bank account applicant before the bank starts to conduct business with the customer. The key component is to ensure that the prospective customer is not on any government list as wanted for fraud and money laundering, and is not a terrorist or a fraudster. Enhanced and further due diligence is required where there is any revelation of the possibility of compromise of the applicant. Noncompliance by the financial institution to the legislation attracts enforcement actions by the Central Bank of Kenya which includes stiff penalties, removal of directors or placing the institution under receivership.

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes. All banks in Kenya are required to conduct a detailed due diligence for each application subject to its circumstances as per the banking legislation and guidelines. Any revelation of noncompliance requires enhanced scrutiny before acceptance. In addition to this, once an institution has established that reasonable grounds exist to suspect that a transaction could be linked to money laundering, it should file a suspicious transaction report with the Central Bank of Kenya within 7 days of the date of the transaction or application.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

No, unless the financial institution has a reason to conduct further due diligence on the application cases of non-compliance. Otherwise, the KYC requirements is limited to identification of the directors, principals and shareholders with 25% shareholding and above.

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

As per the AML Law, obliged parties including banks shall complete the required procedures for identification of their customers. The Guideline also establishes the know-your-customer and customer due diligence principles. The following information is important and must be availed during the application process:

- Determination of the customer's real identity and address,
- Coherency of the customer's documents and information,
- Profession, main revenue-raising activities, and professional principles of the customer,
- Profile and capacity of the customer's transactions,
- Location of customer business office and activity.
- Registration with relevant authorities such as:
 - Registered as a tax payer with Kenya Revenue authority
 - Registration with regulated sectors such as insurance, aviation etc.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

Yes, The Central Bank of Kenya's prudential guidelines state that an institution incorporated outside Kenya must provide a confirmation from the home country supervisor that the promoters of the foreign incorporated bank do not operate a shell bank.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

Kenya introduced an amendment to its Companies Act of 2015 in July 2019, which provides that companies incorporated or registered in Kenya should keep a register of beneficial owners with the relevant information relating to such owners. Failure by a company to comply with the disclosure requirements is an offence which on conviction attracts a fine not exceeding Kenya Shillings Five Hundred Thousand (KES 500,000) payable by the company and each officer of the company in default.

2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?

Banks and financial institutions in Kenya are regulated by the Central Bank of Kenya. They fall under the following categories:

Commercial Banks and Mortgage Finance Companies. These could be privately or publicly owned.
Microfinance banks
Remittance Bureaus and Money Remittance Providers.

There are also over 14,000 Savings and credits Cooperative Societies (Saccos) registered in Kenya. These are registered societies whose principal objectives are to encourage thrift among its members and to create a source of credit to its members. They are registered with the Ministry of Industrialization. Larger Saccos that meet a certain threshold, are licensed and supervised by SACCO Societies Regulatory Authority (SASRA).

2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?

All types of banks are available for both legal and natural persons.

3. Process and way of working

3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?

Yes. Answered in Part 2.

3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?

Answered in Part 2.

3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.

Yes, cash transactions are allowed in Kenya. Effective 5th January 2016, the Central Bank issued additional prudential guidelines issued to all banks that required bank customers to declare names of beneficiaries of cash withdrawals above Sh1 million and justify why such large transactions cannot be done using electronic transfer channels.

3.4 Do the banks require proof of compliance with national and international laws and regulations?

Compliance with national and international laws and regulations is required by all banks in Kenya, however there is not a procedural requirement for submission of a proof of compliance with national and international laws and regulations.

3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?

Once an institution has established that reasonable grounds exist to suspect that a transaction could be linked to money laundering, it should file a suspicious transaction report with the Central Bank of Kenya within 7 days of the date of the transaction.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

Large currency transactions may also be considered within suspicious transactions and if such transaction is deemed suspicious, then the relevant bank shall report such transaction to the central Bank.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?

For most banks, the banking services agreement provides that the bank reserves the right to suspend/terminate their services when, amongst other things, the bank notices illicit activities. Although there is not a requirement for the banks to notify their clients, in practice banks inform their clients if their account is closed by the bank due to non-compliance with the laws and regulations and/or suspicious transactions and request them to withdraw their remaining balance in their account.

When the liquidation procedure is started as to a bank account, the account holder may submit an objection to the bank. However, it is not likely that the bank will accept such objection unless the bank has made a material error in starting the terminating the services. Alternatively, the objection may be submitted to the Central Bank Financial Institutions Supervisory unit. The Authority will get

the relevant bank's opinion on the matter and make a decision accordingly. It is also possible to file a lawsuit against the bank under the banking services agreement executed with the bank.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

Answered in part 2 above.

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

No, there is not a specific obligation imposed on the banks to verify the organizational structure of a legal entity. However, in practice, in line with the banking legislation and the Guideline, banks may require further corporate information and documents from the applicants in cases where additional due diligence is required.

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

In addition to the basic KYC requirements, the following are mandatory:

- Kenya Revenue Authority Pin certificate
- National Identity Card (Kenyan) or Passport (non-Kenyan)
- 1 passport photo

5.2 What documents are needed in order to open an individual bank account?

Banks generally require ID Card/Passport, Kenya Revenue Authority (KRA) pin, address and contact details of a natural person in the event of application for opening a bank account.

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

A bank may refuse to open an individual account if the applicant is unable to provide requisite documents as existing legislation.

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g. objection / legal procedure)?

An applicant may object to a refusal decision to the relevant bank. It is also possible to file a complaint to the Banking Regulation and Supervision Agency.

6. Digital-/Cryptocurrency

6.1 Are accounts for crypto currency allowed? If yes, is such crypto currency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a crypto currency account.

Crypto currency platforms are not regulated in Kenya. The Central Bank of Kenya issued a notice in December 2015 warning the public in dealing with crypto currencies as they are not regulated in Kenya.

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

N/A

7. Opening an account without proof of Residency

7.1 Can an account be opened without proof of Residency?

No, a proof of residency must be submitted in order to open an account as part of the minimum KYC requirements.

7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.

N/A

8. Recent developments in retail banking

8.1 What recent developments in retail banking have taken place?

The most prominent is the introduction of Mobile banking; this enables most bank account holders to transact between their bank accounts and Mobile money accounts or other bank accounts. Transactions include deposit, withdrawals, loans, statements and many more available in mobile banking apps.

8.2 What retail banking services are offered to customers?

Retail banking services available in Kenya include:

- Current/checking and savings accounts
- Mortgages
- Business and personal loans
- Credit cards
- Remittances

9. Recent developments in Anti-Money Laundering (AML) and online banking

9.1 What recent developments in AML and online banking have taken place?

As stated in part 8.1. above the advancement of the mobile banking payment systems in Kenya prompted the Central Bank to issue guidelines covered under the Anti- Money Laundering Regulation for the provision of Mobile Payment Services of 2013. The purpose of the act is to:

- To define the Anti-Money Laundering regulations for the delivery of mobile payment services
- To implement and enforce sound anti-money laundering legislation for the Mobile payment service providers
- To ensure all Mobile Payment Service Providers are subject to effective systems for monitoring and ensuring compliance with AML/CFT measures;

Studies indicate that the developments in online banking have had a positive effect in the Kenya's economy by bringing in a significant population into the banking system that were previously unbanked.

Company name: LABCHEY CONSULTING LIMITED
Country: KENYA
Office IP: -
Office address: SUITE NUMBER 16, KUGERIA COURT, 12 RALPH BUNCHE ROAD NAIROBI
Tel: +254725600915
Fax:
URL: <https://www.labchey.com>
Author: LABAN CHEGE
e-mail: laban@labchey.com

Company & Author details

Please provide the following additional details:

Labchey Consulting is one of the leading medium sized audit, tax, business and management consultancy firms in Kenya and a brand name for business solutions today.

We offer tailor-made services that meet the needs of a variety of clients and particularly companies and organizations that are in pursuit of making big changes to the way they do business.

We attribute our strength to our ability to adapt to changes and demands in the provision of various services to our clients. Our mission is to add value to our clients' businesses by addressing the changing needs of today's business.

We help organizations identify, assess and manage complex issues and risks across the whole enterprise – or within any part of it – whether they are strategic, financial or operational in nature. We help clients to develop risk management solutions that minimize hazard, resolve uncertainty and maximize opportunity.

Labchey Consulting possesses particular strengths & capabilities in a wide range of practice areas including Accountancy, Audit Assurance, Business Recovery & Insolvency Company Secretarial Service, Corporate Governance & Risk Management, Project Financial and Management, Forensic Accounting & Litigation Support, Business Licensing Review, Mergers & Acquisitions, Taxation Advisory, Internal Audit Corporate & Commercial Law, Energy & Infrastructure Projects, EPC Contracts, Public Tenders & Privatization, International business and valuations.

Author: CPA Laban Chege



Address: Suite Number 16, Kugeria Court, 12 Ralph Bunche Road Nairobi Kenya
Tel: +254 725 600915
e-mail: laban@labchey.com
LinkedIn UR: <https://www.linkedin.com/in/labban-chege-10955b25/?originalSubdomain=ke>
Company URL: <https://labchey.com/>

Company LinkedIn URL: <https://www.linkedin.com/in/labam-chege-10955b25/?originalSubdomain=ke>

Laban is a Certified Public Accountant with over 30 years of global experience in the field of Audit, Tax and Corporate Finance. He holds Masters of Business Administration in Strategic Management.

Laban is the current President of Adam Global (Africa and Middle East Region); Adam Global is a leading international platform of business networks that encompasses various professionals including Accountants, lawyers, medical practitioners and specialized consultants.

He is a leading Tax consultant in Kenya with extensive experience in internal and external audits, negotiation, budgeting, enterprise risk management and business planning. He is long standing member of the Institute of Certified Public Accountants of Kenya (ICPAK), Institute of Internal Auditors (IIA), Insurance Institute of Kenya and Kenya Institute of Management (KIM), among others, whose contributions include serving in various committees and writing articles in their journals.

1. Legal overview -Mauritius

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

The Banking Act 2004 sets out the framework for the licensing, regulation and supervision of banks and other financial institutions such as non-bank deposit taking institutions and cash dealers. The Banking (Processing and Licence Fees) Regulations 2015 were issued under the Banking Act 2004 in January 2016 and prescribe the processing and licence fees currently applicable to prospective and existing licensees.

The Bank of Mauritius is the AML/CFT Supervisor for institutions operating in the banking sector and ensures that these institutions comply with the banking laws which include, the Convention for the Suppression of Financing of Terrorism Act, the Financial Intelligence and Anti-Money Laundering Act, the Prevention of Terrorism Act, the Prevention of Terrorism (International Obligations) Act and the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 as well as regulations and guidelines made thereunder.

The Financial Intelligence and Anti-Money Laundering Act 2002 (“the FIAMLA”) and the Financial Intelligence and Anti-Money Laundering Regulations 2018 prescribe, inter alia, the customer due diligence and transaction monitoring standards to be implemented by financial institutions so as to combat money laundering and terrorism financing while the Prevention of Terrorism Act 2002 and the regulations made thereunder provide for measures to combat terrorism in general. The Convention for the Suppression of Financing of Terrorism Act 2003 provides for the International Convention for the Suppression of the Financing of Terrorism to have force of law in Mauritius. In addition, the Prevention of Terrorism (International Obligations) Act enables Mauritius to adhere to various international counter-terrorism conventions.

Furthermore, to enhance customer protection in the financial services sector, the Ombudsperson for Financial Services Act 2018 provides for the establishment of the Office of the Ombudsperson for Financial Services to receive and deal with complaints from consumers of financial services against financial institutions.

Legislation

The Banking Act 2004

The Bank of Mauritius Act 2004

The Ombudsperson for Financial Services Act 2018

Convention for the Suppression of Financing of Terrorism Act

The Prevention of Terrorism Act

The Financial Intelligence and Anti-Money Laundering Act

Prevention of Terrorism (International Obligations) Act

United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019

The Mauritius Deposit Insurance Scheme Act

Public Debt Management Act

The National Payment Systems Act 2018

Regulations

The Banking (Processing and Licence Fees) (Amendment) Regulations 2021

National Payment Systems (Authorisation and Licensing) Regulations 2021

Financial Intelligence and Anti-Money Laundering (Registration by Reporting Person) Regulations 2019

Banking (Processing and Licence Fees) (Amendment) Regulations 2019

Financial Intelligence and Anti-Money Laundering (Amendment) Regulations 2018

The Prevention of Terrorism (Special Measures) Regulations 2003

The Prevention of Terrorism (Special Measures) Regulations 2003

The Financial Intelligence and Anti-Money Laundering Regulations 2018

Banking (Compoundable Offences) (Amendment) Regulations 2018

Banking (Processing and Licence Fees) (Amendment) Regulations 2018

Bank of Mauritius (Processing Fee for the Reproduction of Currency Notes and Coins) Regulations 2017

Banking (Processing and License Fees) (Amendment) Regulations 2016

Banking (Compoundable Offences) (Amendment) Regulations 2016

Banking (Processing and Licence Fees) Regulations 2015

Banking (Processing and Licence Fees) (Amendment) Regulations 2013

Banking (Processing and Licence Fees) (Amendment) Regulations 2011

Banking (Processing and Licence Fees) (Amendment) Regulations 2009

Banking (Processing and Licence Fees) (Amendment)(No.2) Regulations 2008

Bank of Mauritius (Compoundable Offences) Regulations 2008

Banking (Compoundable Offences) Regulations 2008

Banking (Foreign Exchange Dealers Regulation 1995) (Revocation) Regulations 2008

Banking (Processing and Licence Fees) (Amendment) Regulations 2008

Banking (Processing and Licence Fees) Regulations 2007

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

The Financial Intelligence Unit (FIU) is the central agency in Mauritius responsible for receiving, requesting, analysing and disseminating to the investigatory and supervisory authorities' disclosures of information –

(a) concerning suspected proceeds of crime and alleged money laundering offences;

(b) required by or under any enactment in order to counter money laundering; or

(c) concerning the financing of any activities or transactions related to terrorism.

The Financial Intelligence and Anti-Money Laundering Act (FIAMLA) and the Financial Intelligence and Anti-Money Laundering Regulations 2018 (FIAML Regulations) address the following FATF requirements, inter alia:

- (i) Customer Due Diligence;
- (ii) Politically exposed persons;
- (iii) Correspondent banking;
- (iv) Money or value transfer services;
- (v) New technologies;
- (vi) Wire transfers;
- (vii) Reliance on third parties; and
- (viii) Internal control and foreign branches and subsidiaries.

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

Reporting obligations apply to:

Banks, financial institution, cash dealer

Non-financial institutions under the Financial Services Act

Professional accountant, public accountant and member firm under the Financial Reporting Act

Licensed auditor under the Financial Reporting Act

Law firm, foreign law firm, joint law venture, foreign lawyer, under the Law Practitioners Act

Barrister

Attorney

Notary

Person licensed to operate a casino, gaming house, gaming machine, totalisator, bookmaker and interactive gambling under the Gambling Regulatory Authority Act

Dealer under the Jewellery Act

Agent in Land and/or Building or Estate Agency under the Local Government Act 2011

Land Promoter and Property Developer under the Local Government Act

A credit union under the Co-operatives Act

1.4 Is an application for a business account with a bank located in your country necessary?

Yes

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Yes

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?

No

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

There is no other legal requirements that need to be met in order to be eligible for a bank account. However, it is the practice in Mauritius that same is done through a Management Company who acts as introducer.

There is no necessity to register with a governmental agency prior to an application.

1.8 Is cybersecurity and data privacy formally regulated?

1. Cybersecurity

Mauritius passed the Computer Misuse and Cybercrime Act in 2003. The Act provides for criminal offences relating to cybercrime and the related rules for investigations and procedures. The Act also covers issues regarding prosecutions, jurisdiction, extraditions and forfeitures.

2. Data Privacy

The Data Protection Act 2017 was promulgated with regards to the protection of data privacy in Mauritius. The Data Protection Act 2017 controls how personal information is used by organisations, businesses or the government. They must make sure the information is used fairly, lawfully and transparent.

The Data Protection Act 2017, englobes the requirements of European GDPR.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

The formal requirements that need to be met in order to open a bank account in Mauritius are mostly documentary. However, the following information will certainly be taken into consideration by the bank:

- Is the country of the applicant eligible to opening an offshore account in Mauritius (not in sanctioned list)?
- Is the business activity acceptable for opening a Mauritius bank account (not prohibited activities)?
- Sources of funds?

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

N/A

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes.

The decision is taken by the Compliance department of the banks.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

Yes.

Banks require to obtain organizational structure of their potential clients. Banks may raise queries with regards to the application for a bank account. Queries may vary depending on the source of funds, business activity and/or target countries. Thus, banks may raise any query that may contain the above examples. They will go up to the UBO (ultimate beneficiary owner).

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

Financial institutions must develop and implement risk-based policies and procedures to mitigate the ML/TF risks identified in their business and customer risk assessments. The risk assessment framework should identify which customers or categories of customers present higher risk and therefore require the application of enhanced due diligence. Similarly, where the financial institution determines that a customer or a category of customer presents low risk, simplified due diligence (SDD) should be applied.

A financial institution shall undertake CDD measures by means of such reliable and independent source documents or information as may be prescribed, and in the following circumstances –

- (a) when opening an account for, or otherwise establishing a business relationship with, a customer;
- (b) where a customer who is neither an account holder nor in an established business relationship with the financial institution wishes to carry out – (i) a transaction in an amount equal to or above 500, 000 rupees or an equivalent amount in foreign currency (where one USD = 40 Rupees) or such amount as may be prescribed, whether conducted as a single transaction or several transactions that appear to be linked; or (ii) a domestic or cross-border wire transfer; (c) whenever doubts exist about the veracity or adequacy of previously obtained customer identification information; (d) whenever there is a suspicion of money laundering or terrorism financing involving the customer or the customer's account.

In addition, financial institutions are required to perform enhanced CDD –

- (a) where a higher risk of money laundering or terrorist financing has been identified;
- (b) where through supervisory guidance a high risk of money laundering or terrorist financing has been identified;
- (c) where a customer or an applicant for business is from a high risk third country;
- (d) in relation to correspondent banking relationships;
- (e) where the customer or the applicant for business is a political exposed person;
- (f) where a financial institution discovers that a customer has provided false or stolen; identification documentation or information and the financial institution proposes to continue to deal with that customer;
- (g) in the event of any unusual or suspicious activity.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

There are no specific prohibitions on the types of financial institutions.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

The AML-CFT Act states that the Beneficial Ownership Information (“BO information”) of companies (including branches), limited liability partnerships, limited partnerships and foundations, shall be provided to the Registrar of Companies upon the incorporation and registration of any such entity, and, later on, at the time of making certain mandatory filings. This disclosure exercise also applies to existing entities that shall be obliged to provide their BO

information when requested by a “competent authority”. These measures will give the enforcement authorities prompt access to up-to-date BO information on the entities in Mauritius. This is a key measure in the fight for AML-CFT.

2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?

Commercial banks.

2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?

No.

All banking institutions are available for both businesses and individuals.

3. Process and way of working

3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?

The foundation of any effective system to combat money laundering and the financing of terrorism is the ‘Know Your Customer’ (KYC) Principle. It is the degree of proximity between the financial institution and the customer which the KYC principle entails that will allow financial institutions to gauge a situation, decide whether a transaction is suspicious and be able to avert risks inherent in money laundering and the financing of terrorism. The safety and soundness of financial institutions are therefore largely dependent on their KYC procedures.

The essential elements of KYC standards should start from the financial institutions’ risk management and control procedures and should include the following:

(i) customer acceptance policy, (ii) customer identification, (iii) ongoing monitoring of accounts and transactions; and (iv) risk management. Sound risk management requires the identification and analysis of ML/TF risks present within the financial institution and the design and effective implementation of policies and procedures that are commensurate with the identified risks.

Financial institutions should: (i) develop a thorough understanding of the inherent ML/TF risks present in its customer base, products, delivery channels and services offered and the jurisdictions within which it or its customers do business; and (ii) design and implement their policies and procedures for customer acceptance, due diligence and ongoing monitoring to adequately control those identified inherent risk. In addition to assessing the ML/TF risks presented by an individual customer, financial institutions should identify and assess ML/TF risks on an enterprise-wide level. This should include a consolidated assessment of the institution’s ML/TF risks that exist across all its business units, product lines and delivery channels.

Financial institutions should assess the effectiveness of its risk mitigation procedures and controls by monitoring the following: (a) the ability to identify changes in a customer profile (e.g. Politically Exposed Persons status) and transactional behaviour observed in the course of its business; (b) the potential for abuse of new business initiatives, products, practices and services for ML/TF purposes; (c) the compliance arrangements (for e.g. through its internal audit or quality assurance processes or external review); (d) the balance between the use of technology-based or automated solutions with that of manual or people-based processes, for AML/CFT risk management purposes; (e) the coordination between AML/CFT compliance and other functions of the financial institution; (f) the adequacy of training provided to employees and officers and awareness of the employees and officers on AML/CFT matters; (g) the process of management reporting and escalation of pertinent AML/CFT issues to the financial institution’s senior management; (h) the coordination

between the financial institution and regulatory or law enforcement agencies; and (i) the performance of third parties relied upon by the financial institution to carry out CDD measures.

3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?

The information the banks request from clients are the ones mentioned as examples above.

Passport no / proof of address / bank reference letter

information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is

3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.

Yes – but strict rules apply.

Section 5 of the FIAMLA imposes a limitation on payment in cash. This limitation was designed and meant to provide an effective remedy to respond to a pressing need in the public interest to combat money-laundering. It also aims at securing an audit trail and acts as a preventive measure against the laundering of the proceeds of crime. Accordingly, apart from certain exempt transactions, described below, transactions in cash in excess of 500,000 rupees are prohibited altogether (where one USD = 40 rupees).

Exempt transactions are transactions for which the limit of 500,000 rupees does not apply and are generally transactions between (i) the Bank of Mauritius and any other person, (ii) a bank and another bank, (iii) a bank and a financial institution, (iv) a bank or a financial institution and a customer, where (a) the transaction does not exceed an amount that is commensurate with the lawful activities of the customer, and 1) the customer is, at the time the transaction takes place, an established customer of the bank or financial institution; and 2) the transaction consists of a deposit into, or withdrawal from, an account of a customer with the bank or financial institution; or b) the chief executive officer or chief operating officer of the bank or financial institution, as the case may be, personally approves the transaction in accordance with any guidelines, instructions or rules issued by a supervisory authority in relation to exempt transactions; or (v) between such other persons as may be prescribed.

3.4 Do the banks require proof of compliance with national and international laws and regulations?

Yes, the bank may require same.

3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?

Yes – banks have to report to FIAMLA.

Section 64(3)(j) of the Banking Act provides that the duty of confidentiality imposed on financial institutions and their employees shall not apply where the financial institution is required to make a report or to provide additional information on a suspicious transaction to the FIU under the FIAMLA.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

Yes, there are requirement for recordkeeping and reporting of large currency transactions.

Section 17F of the Financial Intelligence and Anti-Money Laundering Act requires financial institution to maintain, and keep for the specified period, all books and records with respect to his customers and transactions as set out hereunder : (a) all records obtained through CDD measures, including account files, business correspondence and copies of all documents evidencing the identity of customers and beneficial owners, and records and the results of any analysis undertaken in accordance with this Act, all of which shall be maintained for a period of not less than 7 years after the business relationship has ended; (b) records on transactions, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be maintained for a period of 7 years after the completion of the transaction; and (c) copies of all suspicious transaction reports made pursuant to section 14 of the Financial Intelligence and Anti-Money Laundering Act or other reports made to FIU in accordance with that Act, including any accompanying documentation, which shall be maintained for a period of at least 7 years from the date the report was made.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g. objection procedure / legal procedure)?

No. This order can only be given by a court of law.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

- An incorporation certificate or official registration certificate
- Current company status certificate- Certificate of good standing
- Articles and Memorandum's of Associations
- Directors and shareholders with more than 20% shares
- Certified business plan
- Global license where applicable
- Business data and detailed information of beneficial owners and ultimate shareholders
- Proof of residency at most three months old, Bank references, CVs and passports of all signatories, directors and shareholder (at least 20 %).
- Indication/documents in respect of the source of funds.

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

Yes, a bank can request all of the mentioned examples above.

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

Restrictions on opening of a bank account in Mauritius for a foreigner are imposed on people from a number of countries with a dysfunctional political situation or military conflicts. Below is the list of countries with which the island nation's banking institutions will not work:

- Disputed territory the Peninsula of Crimea;

- Cuba;
- North Korea;
- Iraq;
- Syria;
- Sudan;
- Iran;
- Eritrea;
- Somalia.

In addition, residents of countries that have not signed the Hague Convention must legalize their documents before filing.

5.2 What documents are needed in order to open an individual bank account?

- A relevant visa or copy of passport
- Proof of address in terms of a utility bill dated not more than 3 months
- CV
- Bank reference letter dated not more than 2 years
- Minimum deposit between Rs1,000 and 5,000 depending on the bank

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

Yes, a bank can refuse to open an individual account. The bank may not give specific reasons for that.

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?

There is no legal procedure. It is at the total discretion of a bank to accept or refuse the opening of bank accounts. Upon rejection, one can only request the bank to re consider the application if new information is provided.

6. Digital-/Cryptocurrency

6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.

Cryptocurrency are not issued or guaranteed by the Bank. Users of cryptocurrencies are exposed to risks. Exchange platforms for cryptocurrencies are unregulated. The Bank will not accept any responsibility in case of any loss which members of the public may incur on account of any dealing in unregulated cryptocurrencies.

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

N/A

7. Opening an account without proof of Residency

7.1 Can an account be opened without proof of Residency?

No

7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.

No account can be opened without proof of residency.

8. Recent developments in retail banking

8.1 What recent developments in retail banking have taken place?

No recent developments in retail banking in Mauritius

8.2 What retail banking services are offered to customers?

- Account and deposits- Savings account, Current account, Junior account, term deposit account
- Loans and advances- Home Loans, Educational Loans, Personal Loans, Leasing, overdraft
- Electronic services- Internet Banking, etc
- Credit card / debit card facilities

9. Recent developments in Anti-Money Laundering (AML) and online banking

9.1 What recent developments in AML and online banking have taken place?

On 9 July 2020, the Government of Mauritius strengthened its framework against money laundering and the financing of terrorism by passing the Anti-Money Laundering and Combatting the Financing of Terrorism (Miscellaneous Provisions) Act (the “**AML-CFT Act**”), which amends 19 existing pieces of legislation. The Act aims to align Mauritius with the recommendations of the Financial Action Task Force and the EU Commission.

Penalties for non-compliance

The following fines may be imposed following non-compliance and breaches of AML-CFT laws and Rules:

- The Banking Act: A fine of **MUR10-million** (increased from **MUR1-million**)
- The Financial Intelligence and Anti-Money Laundering Act: A fine up to **MUR10-million and a sentence of imprisonment of up to 5 years** for non-compliance with specific guidelines, and a fine of **up to MUR1-million and imprisonment of up to 5 years** for failure to report suspicious transactions to the FIU in the time prescribed;
- The Financial Reporting Act: A fine of up to **MUR5-million** (increased from **MUR1-million**) may be imposed upon a public interest entity that has failed to restate its financial statement within 30 days of receiving a notice to do so;
- The Prevention of Corruption Act: A fine of up to **MUR10-million** may be imposed upon an entity found to have committed a corruption offence.

The penalties listed above may incite regulated entities to apply enhanced vigilance and to comply with and perform any duties arising from any AML-CFT laws and/or Rules.

Company name: KARICS PARTNERS LTD
Country: MAURITIUS
Office IP address:
Office address: LEVEL 12, NEXTERACOM TOWER 2, CYBERCITY, EBENE, REPUBLIC OF MAURITIUS
Tel: +230 54223214
Fax:
URL:
Author: KALINDEE RAMDHONEE
e-mail: kalindee.ramdhonee@karicspartners.com

Company & Author details

Karics Partners Ltd, your reliable partner and one stop shop in Corporate Services & Outsourcing Solutions in Mauritius and worldwide.

It is a Mauritian based company, specialized in providing a wide spectrum of professional services including company setting up, administration, business model optimization, management consultancy, tax planning solutions and a range of business process outsourcing.

Accompanies investors to establish in Mauritius and using Mauritius as a gateway for doing business into Africa.

Author: Mrs Kalindee RAMDHONEE



Address: Mauritius
Tel: +230 54223214
e-mail: kalindee.ramdhonee@karicspartners.com

Kalindee is a trusted finance professional and progressive executive leader with rapid career growth, an expert in passionately setting up business units and business organisations from scratch and a customer oriented visionary thinker and driver for operational and financial efficiency that optimize team and business performance towards excellence.

She is highly accomplished, process and results driven finance executive with more than 20 years of experience in finance and operations management within world class business environments. Kalindee promotes a well-defined framework, business process optimization and up to date technological and IT tools.

She also promotes business ethics, corporate culture and good corporate governance. Honesty, integrity and passion for quality and timely deliverables mark the difference.

1. Legal overview – Netherlands

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

In The Netherlands the following laws and regulations are to be complied with: the Money Laundering and Terrorist Financing (Prevention) Act (**Wwft**) as well as the Dutch Penal Code (**DPC**) (Wetboek van strafrecht).

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

The authorities for imposing anti-money laundering requirements are mentioned in article 1a Wwft. These are:

- The Dutch Central Bank (**DNB**) – regulator for banks, credit institutions etc.
- The Dutch Authority for the Financial Markets (**AFM**) – regulator for investment firms/institutions, banks and financial service providers etc.
- The Financial Supervision Office (**BFT**) – regulator for accountants, tax advisers and notaries
- The Dutch Tax Authority and Wwft Supervision Office – regulator for real-estate agents, traders/sellers of goods, providers of domicile, pawnshops etc.
- The local Dean of the Bar Association – regulator for lawyers (attorneys-at-law)
- The Gaming Authority (**KSA**) – regulator for gaming casinos
- Financial Intelligence Unit (**FIU**) – investigation and enforcement
- The Dutch Public Prosecutors Office (**DPPS**) – authority to investigate unusual transactions and other alleged criminal violations of the Wwft

The Wwft comprises 5 core obligations:

- (i) taking measures to identify and assess risk of money laundering and terrorist financing as well as recording of the results of such assessment;
- (ii) conducting thorough customer due diligence (**CDD**) prior to entering into a business relationship or conducting (incidental) transactions (following articles 3-11 Wwft);
- (iii) reporting of unusual transactions with the FIU (articles 12-23a Wwft);
- (iv) providing periodic training to employees so that they are able to recognise unusual transactions and conduct proper and comprehensive CDD (art. 35 Wwft);
- (v) adequate recordkeeping and risk assessment/CDD as well as reporting of unusual transactions and providing the results to regulators upon request (articles 33-34 Wwft)

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

In article 1 Wwft 3 main categories of 'institutions' are distinguished. These are:

- I. Banks;
- II. Other financial institutions, such as investment institutions, investment firms, mediators in life insurance, payment service agents, payment service providers acting on behalf of a payment service provider with another EU member state licence, payment service providers, electronic money institutions, currency exchange offices etc.
- III. Designated natural persons or legal entities acting in the context of their professional activities, such as accountants, lawyers, tax advisers, domicile providers, real-estate brokers, traders/sellers of vehicles, ships, jewellery etc., notaries, pawnshops etc.

The Wwft, however, does not apply to lawyers, notaries and tax advisers insofar as they perform work for a client regarding the determination of his legal position, his legal representation and

defence including giving advice before, during and after legal proceedings or giving advice on instituting or avoiding legal proceedings.

The Dutch law is not very clear on the point of cross-border reporting requirements. The Wwft does not seem to provide for a territorial delineation of unusual transaction as such. However, according to article 16 Wwft, an institution is obliged to immediately (within 2 weeks) report an unusual intended or effected transaction with the FIU. This reporting obligation applies if (a) the CDD failed and there are indications that the customer is involved in money laundering or terrorist financing, or (b) a business relationship is terminated and there are indications that the customer is involved in money laundering or terrorist financing.

Therefore, the Wwft institutions can be obliged to report cross-border transactions if these transactions are considered to be unusual, as explained above.

1.4 Is an application for a business account with a bank located in your country necessary?

If an entrepreneur is planning to start doing business in the Netherlands, they require a business (IBAN) account which enables him to make national and cross-border Euro payments easily and securely. If they already have a business bank account in the SEPA (Single Euro Payment Area) zone they do not need to set up a new one. However, if an entrepreneur is located outside the SEPA zone and plans to do business in or from the Netherlands it is necessary to apply for a business account with a bank located in the Netherlands.

Four Dutch banks (ABN AMRO, ING, Rabobank and BNP Paribas) work together in order to quickly inform a foreign entrepreneur if they are eligible to apply for an account. For that purpose, the Dutch Banking Association (NVB) has created a so called “Quick Scan “Dutch Business Bank Account”” and on the basis of provided information the bank determines if you can start the application process and informs you of the result of the quick scan withing 5 business days.

This scan is intended for entrepreneurs who are already in the process of registering with the Dutch Chamber of Commerce (KvK) and obtaining a residence permit.

Please note that without a Chamber of Commerce number a business account cannot be applied for.

(More information about the quick scan can be found on the website of NVB (www.nvb.nl). If one is eligible to apply, the bank will initiate a regular application process.

Please note that only entrepreneurs who are receiving assistance from the Netherlands Foreign Investment Agency (NFIA) or from another facilitator are eligible to use the option of quick scan and need to turn directly to a bank of their choice to check if they are eligible to apply for a business account.

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

The banks are required to scrutinise applications thoroughly due to strict legislation and individual acceptance policies. The banks need to know where the investment capital is obtained, who the stakeholders in the company are and to identify the new clients. If one is not able to identify themselves physically at a bank office in the Netherlands some banks offer a possibility to send a copy of an identification document legalized by a notary.

Please keep in mind that this option is not provided by all banks.

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?

If foreign company wishes to have a permanent establishment in the Netherlands it has to register with the Dutch Commercial Register (Handelsregister) prior to applying for a corporate bank account.

A registration with the Dutch Commercial Register is not needed for a foreign company without a permanent establishment in the Netherlands.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

As stated above (see 1.4) as of 20 May 2019 the procedure for a foreign entrepreneur outside the Netherlands to apply for a bank account with a Dutch bank has been simplified due to introduction of the 'Quick Scan Dutch Business Bank' which enables banks to assess whether a bank account is feasible for the entrepreneur more quickly – within 5 days the entrepreneur will know whether or not the assessment is positive, after which the regular CDD procedure is followed.

The documents and information needed for the assessment is as follows:

- information about the Dutch company (full legal name, address, Chamber of Commerce number (KvK), (parent) company website (if applicable);
- description of the activities the company intends to establish in the Netherlands;
- total annual turnover for company/group including global number of employees;
- full legal shareholder structure (including all (foreign) legal entities (if applicable), the ultimate parent company and the Ultimate Beneficial Owners (UBOs) with an interest of **10% or more**;
- name(s) of the (proposed) director(s) of the Dutch company/subsidiary including date of birth and country of residence;
- if applicable the name and e-mail address of the *Netherlands Foreign Investment Agency* (NFIA) including the NFIA letter of Contract or the start-up facilitator agreement;
- reason for establishing a company, subsidiary or branch in the Netherlands as well as number of employees the Dutch company plans to hire, expected annual turnover, from which countries the funds will be received, to which countries the payments will be made etc.;
- a business plans.

Please also see 2.5 for a more complete list of needed documents.

1.8 Is cybersecurity and data privacy formally regulated?

In the Netherlands the general data protection is regulated by the General Data Protection Regulation (GDPR / AVG), the Dutch GDPR Implementation Act (DGIA / Uitvoeringswet Algemene verordening gegevensbescherming, and the Dutch Telecommunications Act (TA / Telecommunicatiewet).

The DGIA implements the GDPR and includes among others exceptions for the processing of special categories of personal data and data relating to criminal law matters.

The Dutch Data Protection Authority (Dutch DPA/Autoriteit Persoonsgegevens) supervised processing of personal data in order to ensure compliance with laws that regulate the use of personal data.

The TA implements the EU ePrivacy Directive 2002/58/EC and includes provisions on unsolicited electronic communications and the use of cookies (and similar techniques).

The cybersecurity is regulated in the Network and Information Systems Security Act (NISSA / Wet beveiliging netwerk- en informatiesystemen) which implements the NIS Directive EU 2016/1148.

The NISSA applies to (i) digital service providers with a main establishment in the Netherlands (excluding small and micro enterprises), and (ii) designated '*vital operators*' in the Netherlands being 'operators of essential service' and 'operators of other services' of which the continuity is of vital importance for the Dutch society.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

A foreign company that doesn't have a permanent establishment in the Netherlands doesn't have to register with the Dutch Commercial Register (Handelsregister). A *permanent establishment* is a foreign company's premises located in the Netherlands and capable of acting as a fully self-sufficient business. However, if a foreign company is starting a branch office in the Netherlands it is necessary to register the foreign company branch at the Netherlands Chamber of Commerce.

As the Dutch company law recognises all foreign business structures **except sole proprietorships** it is not necessary to have your business converted to a Dutch legal form, hence you can use the legal structure from your own country (e.g., Ltd/LLP/GmbH/SA/AG and even US Delaware Corporation). The national laws in the country of origin remain applicable.

Please keep in mind that the European Council Directives 68/151/EEC and 89/666/EEC stipulate specific rules about registering companies founded in the European Economic Area.

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

Next to the obligations stated in 1.5 the banks are legally obliged to determine the tax residency of their customers. This is a part of Common Reporting Standard (CRS) as established by the OECD and is intended to prevent tax evasion. The banks are obliged to request a statement about the tax location of the (international) company in order to determine a tax residence. If a tax residence is determined in another country the bank must pass on the details of the company to the Tax Authorities who will then pass that information on to the tax authorities of the country where the company is located – if that country participates in the CRS.

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes, the banks are obliged to do a thorough CDD before making a decision.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

As part of a thorough CDD the banks are required to obtain not only the organizational structure of their (potential) clients but also need to determine where the investment capital is obtained, who the stakeholders in the company are and to generally identify the new clients, but also – as stated in 2.1 – need to determine tax residency.

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

The Wwft provides for three types of CDD: standard, simplified and strengthened and need to be conducted prior to accepting new clients.

The starting point is that a bank conducts a strengthened CDD due to a high risk of money laundering or financing of terrorism. This is also the case if the customer is domiciled or established or has its seat in a state which has been designated by the European Commission as a

state with higher risk of money laundering or terrorist financing (following art. 9 of the Fourth Anti-Money Laundering Directive).

Therefore, the banks shall request the following information:

- Full legal name and address of the company;
- Chamber of Commerce number;
- Total annual turnover for the company/group
- The name of NFIA advisor or start-up facilitator;
- Global number of employees;
- All details of the (proposed) directors of a Dutch company or subsidiary (full name, DOB, country of residence);
- Request the business rationale for establishing a company/subsidiary/branch in the Netherlands;
- Number of employees the Dutch company is planning to hire for each of the first three years;
- Which banking service will be required (e.g. EUR/USD/GDP etc., internet banking)
- What the expected annual turnover shall be of the Dutch company/subsidiary/branch for each of the first three years;
- From which countries the company/subsidiary/branch will be receiving funds;
- To which countries the payments will be made from the (potential) account of the Dutch company/subsidiary/branch
- A description of the operating cycle of the Dutch company/subsidiary/branch (flow of money/goods/services);

The banks shall require the following documents in support of the provided information:

- Extract of the Chamber of Commerce;
- Organizational structure (full legal shareholder structure of the company including all (foreign) legal entities (if any), the ultimate parent company and the ultimate beneficial owners (UBO's) with an interest of 10% or more);
- A copy of the NFIA letter of Contract or the start-up facilitator agreement;
- A business plan or pitch deck.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

Article 5 Wwft states that banks and other financial institutions are prohibited to enter into or continue a correspondent relationship with a shell bank / bank or other financial institution which is known to allow a shell bank to use its accounts.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

Following the implementation of the Fourth Anti-Money Laundering Directive a UBO register came into force on 27th September 2020. The primary goal of the UBO register is to offer support to government authorities and institutions, such as banks, with their CDD.

Newly founded companies **must** register their UBO's directly while the existing companies have until March 27th, 2022 to do the same.

2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?

- State bank (De Nederlandsche Bank (DNB))
- Commercial banks
- Savings banks

<ul style="list-style-type: none"> • Mortgage banks • Brokers
<p>2.9 Are there banking institutions which are not available for certain type of customer (e.g. not for businesses / not for individuals)?</p> <p>Except for the DNB - which participates in monetary policy, payment transactions and foreign exchange market operations - all banks in The Netherlands offer their services to both individuals as well as to businesses.</p>
<p>3. Process and way of working</p>
<p>3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?</p> <p>Yes, they are. The standard pertaining to the obligation for the bank to conduct a CDD policy is stated in Section 3:10(1)(c) of the Financial Supervision Act ('Wft') and is further elaborated in (among other things) the Money Laundering and Terrorist Financing Prevention Act ('Wwft').</p>
<p>3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?</p> <p>Please see answer as stated under 2.5.</p>
<p>3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.</p> <p>Cash transactions are allowed, however the banks can and have tightened their controls of cash transactions in order to prevent criminals from laundering money through (their) accounts. This so-called "gatekeeper function" has been known to all financial institutions in the context of the Wwft for some time, but now that politicians are giving more priority to "preventing (or at least limiting) mixing of the upper and lower world", banks are also expected to carry out strict(er) checks of cash transactions.</p>
<p>3.4 Do the banks require proof of compliance with national and international laws and regulations?</p> <p>Yes, please see also 2.5 for the CDD process.</p>
<p>3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?</p> <p>In the Netherlands unusual activities, such as transactions which do not comply in all respect with the regulations developed, must be reported. Financial institutions register data of (legal or natural) persons who have committed fraud or otherwise pose a risk. The condition is that it concerns a serious incident or suspicion. For example, identity fraud, skimming, phishing, money laundering or mortgage fraud.</p> <p>Following article 16 Wwft a bank is obliged to immediately (but ultimately within two weeks) report an unusual intended or effected transaction with the FIU, right after it becomes aware of the unusual nature of the transaction.</p> <p>A bank also has an obligation to report if the CDD failed and there are indications that the (intended) customer is involved in money laundering or terrorist financing or if the bank terminates a business relationship after indications that the customer is involved in money laundering or terrorist financing.</p>

Objective indicators for banks are e.g. (cash) transactions of EUR 10.000 or more / money transfers of EUR 2.000 or more. As for the subjective indicators, these are vaguer, however a frequently used subjective indicator is e.g., a transaction which gives reason for the bank to assume that it may be related to money laundering or terrorist financing. The subjective indicators are, of course, a part of bank's internal regulations.

Please note that institutions are prohibited from informing the client (or other parties) of the fact that an unusual transaction has been reported, this in order to prohibit tipping-off. A report of an unusual transaction in good faith indemnifies the bank for civil actions by the client (or other/third party involved) and for criminal actions that could be initiated following the report.

It may also happen that a person - a natural or legal person - is involved in an incident, for example in (an attempted) fraud at a financial institution. The bank then puts a limited amount of data about that person in its own internal referral register (IVR). Is the incident serious? The same data will then also be entered in the 'external reference register' (EVR). The IVR and EVR are part of the Incident Alert System for Financial Institutions (IFI). The aim is to identify (fraud) risks in a timely manner. And also tackling and preventing crime within the financial sector.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

Following article 33 Wwft the Wwft institutions (such as banks) must keep records of the performed CDD on the basis of Wwft and the measures it took to investigate complex and unusually large transactions. These records must be kept for five years from the date the transaction was executed or the date of termination of the business relationship.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?

A bank cannot liquidate an account (whether or not a non-complicit transaction took place) without prior notification to the account owner. It can, however, freeze the account immediately without prior notification.

Account owner can submit an objection to the liquidation intent of the bank, whether or not it will cause the bank to change its decision on this will be determined on a case-by-case basis.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

Please see 2.5.

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

Yes, banks are required to verify the organizational structure as well as all other required documents including tax residency.

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

For an individual to open a Dutch bank account the following is required: a Dutch address, citizen service number (BSN) and valid ID card/passport/Dutch drivers' license. In the case of a minor a permission from a parent or guardian is required to apply for a payment account.

5.2 What documents are needed in order to open an individual bank account?

For an individual to open a bank account he/she needs to provide the bank with a proof of their Dutch residential address, copy of an ID card from which their BSN can be checked.

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

In the Netherlands there are two types of bank accounts for individuals: a regular bank account and a so called 'basic payment account'. (Citizens residing lawfully in the EU are entitled to a basic payment account if they meet the applicable statutory conditions.).

In principle, with regard to a **regular payment account**, banks are not obliged to maintain accounts of certain customers. Banks determine their own business strategy and the desired risk profile. Banks adjust their customer base accordingly and can therefore refuse to open a regular payment account.

The grounds for refusal for a **basic payment account** are however included in Section 4:71g (1) to (3) of the Wft. The grounds for refusal are:

- A bank refuses to open a basic current account if, when opening it, the bank cannot meet the requirements set by or pursuant to the Money Laundering and Terrorist Financing Prevention Act (Section 4:71(1) Wft).
- A bank *may* refuse to open a basic current account if the applicant:
 - a. cannot demonstrate that it has a real interest in opening a basic payment account in the Netherlands;
 - b. has an application for a basic payment account with a bank established in the Netherlands or already holds a payment account with another bank established in the Netherlands, with which he can make use of the services referred to in Article 17(1) of the Payment Accounts Directive, unless the applicant declares that he has been informed that that payment account will be closed;
 - c. has been irrevocably convicted less than eight years ago for, for example, the crimes of forgery, prejudice to creditors in bankruptcy and money laundering;
 - d. had a basic current account that was closed less than two years ago pursuant to Section 4:71i(1)(f); or
 - e. refuses to sign the statement referred to in subsection 3 on request (Section 4:71g, subsection 2, Wft).
- The third paragraph states that the bank is permitted, before opening a basic payment account, to check with other banks established in the Netherlands whether the applicant maintains or has applied for a payment account there. The bank may request the applicant to sign a statement showing that he does not hold or have applied for another payment account with a bank established in the Netherlands.

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g. objection / legal procedure)?

Please see 5.3.

6. Digital-/Cryptocurrency

6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.

The Dutch banks are still hesitant when it comes to cryptocurrency accounts. Currently, bank Bunq is the only option and it is only optional for companies. In order to open a business cryptocurrency account, one must fulfil strict conditions. Entrepreneurs will have to answer additional questions and provide a clear overview of their income and where it comes from. In order to apply for a business cryptocurrency account, one must make sure they have a solid business plan and map out all future cash flows well.

The main reason for Dutch banks to be so hesitant regarding the cryptocurrency accounts is that banks are required by law to show that all money has been earned in a legal manner, and in the case of cryptocurrencies, this is very difficult.

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

As a result of the Implementing Act Amendment to the Fourth Anti-Money Laundering Directive, providers of services for exchanging virtual currencies and fiduciary currencies and providers of custodian wallets for virtual currencies (providers of crypto services) that want to become active in or from the Netherlands **must apply for registration in the public register of DNB**. To do this, they must be able to demonstrate that they comply with the two laws mentioned above.

DNB however, only supervises the compliance of registered providers of crypto services with the Money Laundering and Terrorist Financing Act and the Sanctions Act 1977. Registered companies are not subject to prudential supervision by DNB or by the AFM on conduct of business. This means that financial business risks are not monitored and there is no specific consumer financial protection nor requirements for recordkeeping or reporting of large cryptocurrency transactions.

Moreover, for the time being, there is no registration requirement for entities that only exchange between virtual currencies.

7. Opening an account without proof of Residency

7.1 Can an account be opened without proof of Residency?

Following the EU Directive 2014/92 a legal resident of an EU country has the right to open a basic current account anywhere in the EU. Banks cannot refuse your application just because you do not live in the country where the bank is located.

However, the Dutch banks do require the applicant to be either resident or liable to pay tax in the Netherlands. Exceptions are possible, but the banks are rather reluctant to open an account if one isn't Dutch resident/taxpayer.

7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.

Please see 5.1 for the CDD requirements.

Whether the application will be successful depends on the bank's willingness to accept a client who is not a Dutch resident.

8. Recent developments in retail banking

8.1 What recent developments in retail banking have taken place?

The Covid-19 pandemic has put the world in an exceptional situation. Banks feel an even greater need to serve society as well as possible in addition to their customers and their employees. They have an important responsibility to maintain essential services while protecting the health and wellbeing of staff.

Maximum use of digital capabilities (e.g., video calls with a bank employee instead of going to the bank) and effective resource allocation will form the basis for meeting these evolving demands.

8.2 What retail banking services are offered to customers?

Next to internet/mobile banking and debit & credit cards some Dutch banks offer a vault, retirement planning, mortgages, wealth management services, private banking, etc. Certain retail banks may outsource investment services while some may connect them with savings accounts and other banking products.

9. Recent developments in Anti-Money Laundering (AML) and online banking

9.1 What recent developments in AML and online banking have taken place?

The current version of the Wwft entered into force on 21 May 2020. The most striking changes to the Wwft are the following:

- expanding scope to providers of exchange services between virtual currency and fiat currency and custodian wallet providers;
- sharper measures regarding anonymous use of prepaid means of payment (reduction of the maximum amount from €250 to €150 and restriction on use);
- tightened measures regarding high-risk countries (designated by the European Commission) and transactions to and from these countries;
- improving the exchange of information between Financial Intelligence Units (FIUs) and supervisors, through centralized automatic automatisms.

In addition, Rabobank, ABN Amro, ING, Triodos and Volksbank have started to combine their payment data under the name "Transaction Monitoring NL" (TMNL), and then analyze them in bulk for suspicious patterns.

TMNL itself cannot do much with these kinds of unusual transactions because the data cannot yet be traced back to persons or companies due to the use of pseudonyms. That is why the banks that have the main suspect and all intermediaries as customers are notified. That bank itself is allowed to access the non-anonymized data of its own customers and can then, as required by law, file a report with the FIU. The FIU then determines whether the transaction in question is really suspicious, and in that case passes it on to the Public Prosecution Service or the Fiod (for tax fraud).

Company name: Attorney Consulting Group International B.V.
Country: The Netherlands
Office IP address:
Office address: Amstelveenseweg 500, 1081 KL Amsterdam, The Netherlands
Tel: +31 (0)20 800 64 00
Fax: +31 (0)20 890 77 70
URL: www.acginter.com
Author 1: Edith Nordmann
e-mail: info@acginter.com

Company & Author details

Attorney Consulting Group International (ACG International) is a full-service law firm focused on companies that are engaged in international trade and innovation. ACG International is based in Amsterdam, and active around the globe keeping in mind that a good (personal) match between the client and his legal service provider is very important.

ACG's attorneys are known for being individual experts in their fields and for their ability to join forces across practice areas and borders, to get deals done and to find solutions that achieve the best results for our clients' needs helping them mitigate risks and navigate the pitfalls of cross-border transactions.

Our fields of expertise are Employment Law, Corporate Law and Business Structuring, Business and Commercial Law, Contracts, International Private Law, Litigation and also cross-border business transactions, supporting international clients in entering and penetrating the EU-market with a perfectly tailor-fitted legal structure, and last but not least we assist Dutch businesses on the Dutch market and abroad with a wide range of services.

ACG International is your experienced partner when it comes to doing business in the Netherlands.

Author: Edith N. Nordmann



Address: Amstelveenseweg 500, 1081 KL Amsterdam, The Netherlands
Tel: +31 20 800 64 00
e-mail: enordmann@acginter.com
LinkedIn URL: <https://www.linkedin.com/in/edithnordmann/>
Company URL: www.acginter.com

Edith Nordmann is Managing Partner and Attorney at Law at Attorney Consulting Group International (ACG International).

She is an experienced corporate and commercial litigator, has an expert qualification in employment law and is an international ADR certified mediator.

Edith is specialised in cross-border business transactions taking into consideration not only the different legal systems but also being acquainted with the various cultural differences that can make or break a deal. As a public speaker she has shared this knowledge on various international conferences.

As Managing Partner of ACG International, Edith can combine all these skills and expertise for the benefit of her international clients. By using deep-seated local knowledge and proven (international) networks across practice areas and borders, she assists her clients in getting deals done and finding solutions that achieve the best results for their actual needs.

Being fluent in German (as a native speaker), English, Dutch, French and Italian and understanding difference in mentality, culture and legal systems across many different cultures and countries, she is able to help her clients in a unique way.

Next to her professional career Edith engages in many charitable and social organizations using her professional expertise, not only helping others but also empowering them in their endeavors.

1. Legal overview - Nigeria

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

The following laws and regulations are to be complied with:

- Central Bank of Nigeria (CBN) Act 2007
- Banks and Other Financial Institutions Act (BOFIA) 2020
- Money Laundering (Prohibition) Act 2011
- Nigerian Financial Intelligence Unit Act 2018
- Economic and Financial Crimes Commission Act 2002
- Nigerian Customs, Currency, & Airport Tax Regulations
- Prevention of Terrorism Act 2011
- Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013 (CBN AML/CFT)

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

The legal or administrative authorities for enforcing anti-money laundry requirements in Nigeria are:

- The Central Bank of Nigeria (CBN)
- The Economic and Financial Crimes commission
- The Nigerian Police Force
- The Nigerian Financial Intelligence Unit
- Special Control Unit against Money Laundering
- Nigerian Customs Service

Some Anti-money laundering requirements applicable in Nigeria include:

- Financial Institutions or Designated Non-Financial Institution are required to report to EFCC of any single transaction, lodgement or transfer of funds above N5,000,000 or its equivalent (for individuals), and N10, 000,000 or its equivalent (for companies).
- Evidence of registration with Special Control Unit against Money Laundering (SCMUL) may be required for companies involved in certain line of businesses
- Banks are also required to periodically update their customers' Know Your Customer (KYC) details.
- Financial institutions are required to identify and file suspicious transactions detected in any accounts within their institutions.
- Financial institutions give special attention to transactions by foreign persons or companies from countries who do not apply the Financial Action Task Force (FATF) Recommendations.
- A distinctive Bank Verification Number (BVN) is assigned to every account holder and the opening or maintaining of numbered or anonymous accounts by any person, Financial Institution or corporate body is prohibited.

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

The financial institutions and other businesses subject to anti-money laundering requirements include: banks, body association or group of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institutions, debt factorization and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger service, investment management, local purchase order financing export finance, project consultancy, financial consultancy, pension funds management, dealers in Jewellery, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, hotels, casinos, supermarkets.

No, there are no cross-border reporting requirements.

1.4 Is an application for a business account with a bank located in your country necessary?

No, it isn't. A visit to the bank, with the necessary documents suffices.

1.4 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

In line with the CBN's directives, the banks are obliged to scrutinise account opening applications thoroughly. This includes ensuring that shareholders and directors are properly identified, with a current identification card.

1.5 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?

No, there is currently no requirement for registration with any Chamber of Commerce or registrar as every company willing to operate and conduct business in Nigeria must be registered under the Corporate Affairs Commission - the body vested with the power to register companies. Therefore in order to open a corporate account, every company must be registered with the aforementioned Commission and with the Federal/State Inland Revenue Service.

1.6 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

- The company must obtain the relevant certificate from Corporate Affairs Commission (CAC)
- The company must be registered with the relevant Nigerian tax authorities, with an assigned Tax Identification Number (TIN).
- The company must have a registered business address in Nigeria.
- Foreign signatories are required to have a resident permit/work permit to live and work in Nigeria.
- The company's directors and signatories to the account should have a Bank Verification Number (BVN). Where they do not already have one, they will be required to register for BVN.

1.7 Is cybersecurity and data privacy formally regulated?

Data privacy and cybersecurity are to a large extent regulated in Nigeria.

The Cybercrimes (Prohibition, Prevention etc) Act 2015 was enacted to generally apply to cybersecurity crimes in Nigeria. More specifically, the Central Bank of Nigeria (CBN), pursuant to its

regulatory powers, issued the Risk-Based Cybersecurity Frameworks and Guidelines for Deposit Money Banks and Payment Service Providers in 2019.

Data privacy is also regulated by virtue of the Nigeria Data Protection Regulation 2019

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

The requirements for opening an account vary for different types account, however, the following are some of the general requirements:

- Valid means of identification for individuals, and copies of documents evidencing registration in Nigeria for companies
- Reference letter(s) for accounts with turnover above N1million
- Evidence of registration with Nigerian tax authorities
- Duly endorsed KYC form showing a verifiable address in Nigeria etc;
- Foreign signatories are required to have a resident permit/work permit to live and work in Nigeria.
- Production of a valid a Bank Verification Number (BVN) by the signatories to the account, or company director for companies. Where they do not already have one, they will be required to register for BVN.
- In addition to the above requirements, evidence of registration with specific regulatory bodies may be required for companies involved in certain line of businesses. For example, certain companies or business enterprises are required to be registered with the Special Control Unit Against Money Laundering (SCMUL)

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

The Central Bank of Nigeria Act 2007

The Banks and Other Financial Institutions Act 2020

Also, in line with its mandate, the CBN frequently provides regulations and guidelines to ensure the Nigerian banking sector is at par with global best practices

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes, banks are required to scrutinize each application thoroughly on the merits before making a decision.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

In order to enhance the Know Your Customer (KYC) Policies applicable to banks in Nigeria, banks are required to obtain the organisational structures of potential companies desiring to open a corporate account.

Therefore, as a prerequisite, potential customers are required to provide official company documents which state the present shareholders of the company, as well as directors of the company. In addition, the identification cards of these persons are also important.

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

To open a bank account in Nigeria, banks mandatorily require a copy of the customer's current means of identification, such as international passport, driver's license, etc.

Pursuant to the Money Laundering Prohibition Act, there are special/enhanced due diligence requirements for certain types of customers such as dealers in Jewellery, Cars and Luxury Goods, Precious Stones and Metals, Real Estate, Estate Developers, Estate Surveyors and Valuers, Chartered Accountants, Audit Firms, Tax Consultants, Non-Governmental Organisation.

According to CBN's regulations, Banks are required to obtain senior management approval before business relationships are established with Politically Exposed Persons (PEP), as well as render monthly return of all transactions by PEP to the CBN.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

Companies which are not incorporated in Nigeria are prohibited from opening a bank account in Nigeria. Furthermore, every customer of a bank must be substantially identifiable, having a verifiable physical address in Nigeria.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

Yes, the Corporate Affairs Commission (CAC) as the government body responsible for the formation, management and regulation of corporate bodies in Nigeria maintains records on the beneficial ownership and control of legal entities

2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?

In Nigeria, we have the Central Bank of Nigeria, Commercial Banks, Microfinance Banks, Mortgage Banks, Merchant Banks and Development Banks

2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?

The Central Bank of Nigeria is not available for private banking. Rather, it serves as a bank to the states and local governments (Section 39 CBN Act) and as a bank to other banks (Section 41 CBN Act)

Additionally, Development banks only service enterprises for capital projects.

3. Process and way of working

3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?

Yes, banks are obliged to carry out Know Your Customer (KYC) or Customer Due Diligence procedures, in order to verify the identity and information provided by a customer.

3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?

The kind of information banks request include:

- Whether the potential client is resident or registered in Nigeria
- The nature of business carried out by the potential client
- The shareholders on the company

<ul style="list-style-type: none"> • The directors of the company <p>The kind of information banks request include:</p> <ul style="list-style-type: none"> • Whether the potential client is resident or registered in Nigeria • The nature of business carried out by the potential client • The shareholders on the company • The directors of the company • The nationality of the potential clients • The registered/residential address of the potential client • Two (2) Independent and satisfactory references • Resident Permit (Where the signatory is an expatriate)
<p>3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.</p> <p>Yes, cash transactions are allowed. The CBN imposes a charge for over-the-counter cash withdrawals exceeding a particular sum.</p>
<p>3.4 Do the banks require proof of compliance with national and international laws and regulations?</p> <p>The banks are expected to be in compliance with national laws regulating the Finance & Banking sector. Compliance with international laws is only required to the extent such international laws have been ratified and domesticated under Nigerian law.</p>
<p>3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?</p> <p>Yes, banks are required to report transactions that are contrary to stated laws. This can be reported to the Economic and Financial Crimes Commission, or the CBN.</p>
<p>3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?</p> <p>Financial Institutions or Designated Non-Financial Institution are required to report to the Economic and Financial Crimes Commission of any single transaction, lodgement or transfer of funds above N5,000,000 or its equivalent (for individuals), and N10,000,000 or its equivalent (for companies). Such transactions must be reported within 7 and 30 days respectively – Section 10(1) Money Laundering (Prohibition) Law 2011.</p>
<p>3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g. objection procedure / legal procedure)?</p> <p>Aside's situations wherein the company is winding up, a bank has no power to voluntarily liquidate an account without an order of court.</p> <p>Where an account has been liquidated contrary to law, the customer will be entitled to institute an action in objection. The court of law is the proper mode of enforcing the provisions of the law.</p>
<p>4. Corporate bank account</p>
<p>4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?</p>

Duly completed Account Opening Form (from a Nigerian Commercial Bank)

- Duly completed Specimen Signature Cards
- Copy of CAC Certificate of Registration (Original to be sighted)
- Certified True Copy of Memorandum and Articles of Association of the Company
- Certified True Copy of Form CAC 07 (Particulars of Directors)
- Certified True Copy of Form CAC02 (Allotment of Shares)
- Tax Identification Number
- Board Resolution
- Two (2) Independent and satisfactory references (completed by another Company)
- Two (2) recent and clear passport-size photographs for each signatory to the account
- Identification card of all directors (International Passport, Driver's License, Voters Card or National ID Card)
- Resident Permit (Where the signatory is an expatriate)
- Proof of Company Address
- Search Report
- Public Utility Receipt
- Mandatory Initial Deposit

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

The bank is required to verify information received by a company in respect of its organisational structure. In line with this, banks ordinarily require certain documents such as:

- Copy of Certificate of Registration (Original to be sighted)
- Certified True Copy of Memorandum and Articles of Association of the Company
- Certified True Copy of Form CAC 07 (Particulars of Directors)
- Certified True Copy of Form CAC02 (Allotment of Shares).

In addition, a bank can conduct a search at the Corporate Affairs Commission, in order to verify information received about a company's composition

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

Every Nigerian can freely open a bank account in a commercial bank with a valid means of identification. Furthermore, non-Nigerians can equally open a bank account with the mandatory documents (i.e., Resident permit, valid international passport, etc.

5.2 What documents are needed in order to open an individual bank account?

- Duly completed Account Opening Form (from a Nigerian Commercial Bank)
- Two (2) recent and clear passport-size photographs

<ul style="list-style-type: none"> • Bank Verification Number • Utility Bill • Valid Means of Identification (International Passport, Driver's License, Voters Card or National ID Card) • Resident Permit (Where the signatory is an expatriate)
<p>5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?</p> <p>Yes, a bank can refuse to open account if the due diligence carried out on the intended account holder reveals traces of criminality or illegality or the results received from the KYC check is unsatisfactory. Furthermore, a bank may refuse to open an individual account if false information is provided by the account holder and such information has been queried and termed falsified information.</p>
<p>5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?</p> <p>A complaint may be lodged with the CBN as the principal regulator of banks.</p>
<p>6. Digital-/Cryptocurrency</p>
<p>6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.</p> <p>Banks are prohibited from opening cryptocurrency accounts in Nigeria.</p>
<p>6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?</p> <p>Not applicable in Nigeria.</p>
<p>7. Opening an account without proof of Residency</p>
<p>7.1 Can an account be opened without proof of Residency?</p> <p>No, potential bank customers are required to provide, alongside other necessary documents, a public utility bill which serves as proof of residency in Nigeria.</p> <p>Furthermore, non-Nigerians are required to provide their Resident Permit, which grants the legal right to live and work in Nigeria, before a bank account can be opened.</p>
<p>7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.</p> <p>Production of a proof of residency by a potential bank customer is a mandatory requirement and cannot be waived.</p>
<p>8. Recent developments in retail banking</p>
<p>8.1 What recent developments in retail banking have taken place?</p> <p>Increased use of online/mobile banking</p> <ul style="list-style-type: none"> • Regulation of FinTech's by CBN • Cashless Policy
<p>8.2 What retail banking services are offered to customers?</p> <ul style="list-style-type: none"> • Unsecured loans to SMEs.

- Retail deposits through various savings products
- Mobile Banking

9. Recent developments in Anti-Money Laundering (AML) and online banking

9.1 What recent developments in AML and online banking have taken place?

- The creation of National Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Strategy.
- The Central Bank of Nigeria (CBN) in exercise of its powers under the CBN Act, 2007, issued the Regulation on Electronic Payments and Collections for Public and Private Sectors in Nigeria 2019 (the Regulation).

In 2019, the Central Bank of Nigeria issued the Risk-Based Cybersecurity Frameworks and Guidelines for Deposit Money Banks (DMBs) and Payment Service Providers (PSPs) in Nigeria.

10. Any points to observe?

10.1

The new policies and regulations are generally geared towards aligning the Nigerian regulatory framework with global standards and preventing the use of online banking transactions as a conduit to conduct money laundering activities.

Company name: Simmons Cooper Partners

Country: Nigeria

Office IP address:

Office address: 9th Floor, Fortune Towers, 27/29 Adeyemo Alakija Street, Victoria Island, Lagos.

Tel: +2347011404511

Fax:

URL: www.scp-law.com

Author: Victoria Alonge & e-mail: victoria.alonge@scp-law.com

Author: Dapo Akinosun SAN & e-mail: dapo.akinosun@scp-law.com

Company & Author details

Simmons Cooper Partners (“SCP”) is a leading corporate commercial Litigation and Dispute Resolution firm in Nigeria consistently ranked in the top tier Nigerian firms in the relevant areas of practice. With multijurisdictional competence spanning Nigeria, the United States and the United Kingdom, SCP fuses sound legal counsel with superior advocacy, and personal and responsive service. SCP provides a very comprehensive and integrated range of transactional, litigation, advisory and several support services.

Our clients are able to draw from a strong and vibrant team in resolving various issues of law in different practice areas. This has particularly been an asset to clients who have questions in several areas of law or issues spanning laws of different countries and jurisdictions. Our services at SCP are compatible and uniquely suited to serve our clients’ local and international needs. Our clientele ranges from individuals, through start-up and small businesses to multi-nationals and governments. Our clients are currently drawn from across Nigeria, other countries on the western coast of Africa, South-Africa, the United States, Europe, India, South East Asia and the Middle East.

Since inception, SCP and its people have provided stellar representation and advisory services on some of the most complex, intricate and precedential matters and transactions in Nigeria. From investment/divestment to large capital raisings; product liability to oil blocks acquisitions; securities litigation to shareholders’ dispute. We have also advised the Federal Ministry of Justice on the introduction of a Competition Law and antitrust regime in Nigeria. Our experience also includes providing capacity-building assistance to several regulatory agencies such as the Nigerian Electricity Regulatory Commission (NERC), the Presidential Committee on Trade Malpractices.

Author: Victoria Alonge



Address: 9th Floor, Fortune Towers, 27/29 Adeyemo Alakija Street, Victoria Island, Lagos

Tel: +2348023231273

E-mail : victoria.alonge@scp-law.com

LinkedIn URL: <https://www.linkedin.com/in/victoria-alonge-ab5987104>

Company URL: www.scp-law.com

Company LinkedIn URL: <https://www.linkedin.com/company/simmonscooperpartners>

Victoria has over three decades of experience representing and advising government and several multinationals on public utility contracts. Combining experience in litigation with public sector/regulatory savvy, she has acted for a number of governments, parastatals, and multinationals. Victoria's input is invaluable in any dispute resolution or public-sector engagement. This work includes representation before the High Court, Court of Appeal, the apex court: the Supreme Court. Victoria's expert trial and appellate skills has seen her engaged in some of the most complex dispute situations. Victoria's incisive opinion on commercial litigation issues is pivotal to any review and advisory process. Victoria, is an Arbitrator and also a Certified Mediator which expertise she has continuously applied successfully in several public and private dispute resolutions matters.

Author: Dapo Akinosun SAN



Address: 9th Floor, Fortune Towers, 27/29 Adeyemo Alakija Street, Victoria Island, Lagos

Tel: +2348038280841

E-mail: dapo.akinosun@scp-law.com

LinkedIn URL: <https://www.linkedin.com/in/dapo-akinosun-san-01637a14>

Company URL: www.scp-law.com

Company LinkedIn URL: <https://www.linkedin.com/company/simmonscooperpartners>

Dapo Akinosun SAN provides valuable and resourceful counsel and guidance in all stages of the energy and natural resources sectors including statutory and regulatory compliance regimes, negotiation and preparation of financing, structural and operational contractual documents and top-tier interaction with regulatory authorities. He also acts for major banks, ICT companies and foreign clients with interests in Nigeria.

Committed to excellence and strong dedication to his clients, Dapo has consistently obtained outstanding results, both in and out of the court. Dapo has litigated a wide range of commercial cases including issues relating to a large-scale and complex financial corporate fraud, oil spill and environmental damages, shareholder trade secret, non-competition, and commercial disputes in state and federal courts and before arbitrators. In the immediate past, Dapo successfully coordinated the trial-court and appellate strategy development and implementation in the successful prosecution of the Election Petitions in several states in Nigeria.

1. Legal overview - Pakistan

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

- a. Anti-Money Laundering Act, 2010
- b. Anti-Money Laundering, Combating the Financing of Terrorism & Countering Proliferation Financing Regulations for the State Bank of Pakistan's Regulated Entities, 2001
- c. Guidelines given by the Financial Action Task Force ("FATF") which is the global money laundering and terrorist financing watchdog.
- d. Banking Prudential Regulations of State Bank of Pakistan

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

Under the Anti Money Laundering Act, 2010, a Financial Monitoring Unit ("FMU") is established having a Data Base record which entertains, scrutinizes and reports Suspicious Transaction Report ("STR") and report on Currency Transaction ("CTR") to the investigating and prosecuting authorities formed under the said statute. In this regard following authorities move side by side to effectively tackle money laundering and terrorist financing:

National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation – Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments.

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

All Financial Institutions including banks, insurance companies, securities companies, trustee, etc. and real estate agencies, lawyers, tax accountants, accountants etc. are subject to anti money laundering laws of the country. However, Pakistan is not formal member of any Common Reporting Standards (CRS).

Furthermore, the Financial Monitoring Unit in the country is envisaged with powers under the Anti Money Laundering Act, 2010 to cooperate with financial intelligence units in or outside Pakistan to effectively counter Money Laundering and Terrorist Financing.

1.4 Is an application for a business account with a bank located in your country necessary?

Yes, a formal application on business letterhead along with certain documents reflecting the identity and detailed credentials of the business entity (sol-proprietorship/ partnership firm /company) are always required to better know about the business and the persons behind it.

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Yes. The banks are strictly required to follow the Banking Prudential Regulations formed by the State Bank of Pakistan including to Know Your Customer "KYC" and Customer Due Diligence "CDD" and Enhanced Customer Due Diligence (EDD) under the "Anti-Money Laundering, Combating the Financing of Terrorism & Countering Proliferation Financing Regulations for State Bank of Pakistan's Regulated Entities, 2021".

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?

A non-resident corporate cannot open a bank account if its representative is a non-resident in Pakistan. On the other hand, registration with the Chamber of Commerce is not necessary however,

registration of any associated office / branch can be obtained from SECP and in few cases permission from the Board of Investment of Pakistan would also be required for the registration.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

Registration of any associated office/branch can be obtained from SECP and in few cases permission from the Board of Investment of Pakistan would also be required for the registration to many banks.

However, different criteria have been laid down for different entities in the "Anti-Money Laundering, Combating the Financing of Terrorism & Countering Proliferation Financing Regulations for State Bank of Pakistan's Regulated Entities, 2021".

1.8 Is cybersecurity and data privacy formally regulated?

Yes. The Prevention of Electronic Crimes Act, 2016, Electronic Transaction Ordinance, 2002, Investigation for Fair Trial Act, 2013, and The State Bank of Pakistan issues guidelines to effectively secure the Cybersecurity and data privacy.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

In order to open a bank and to verify the Customer the following criteria needs to be met;

A. Basic Identification Information

1. Full name as per identity document
2. Mother's Maiden name
3. Date of Birth
4. Place of Birth
5. Permanent Address
6. Identity document number, whichever applicable
7. Date of expiry of applicable identity document

B. Other basic information

8. Father's / spouse's name as per identity document
9. Date of issuance of applicable identity document
10. Contact Number: Mobile Number-(s)/ Land Line Number
11. Purpose of account / transaction / business relation
12. Beneficial ownership / controlling rights

C. Other relevant Information for natural persons, as applicable

13. Current / Mailing Address
14. Personal Email Address (as applicable)
15. Nationality – Resident / Non-Resident Status
16. FATCA / CRS Declaration, wherever required
17. Profession / Source of Income / Funds: Salary, Business, investment income
18. Next of Kin
19. Attested Passport Size Photo (in case of Photo Account instructions)
20. Live Photo (in case of digital onboarding)

D. Information for Legal Persons/ Legal Arrangements

21. Registration/ incorporation number or business registration number (as applicable)
22. Date of incorporation or registration of legal person or arrangement (as applicable)
23. Place of incorporation or registration of legal person or arrangement (as applicable)

24. National Tax Number (NTN)
25. Nature of business, geographies involved and expected type of counter-parties (as applicable)
26. Registered or business address
27. Intended nature of business relations
28. Purpose of account or transaction (where accounts are not maintained and transactions are done by walk in/ occasional customers).
29. Type of account/ financial transaction/ financial service
30. Expected monthly credit turnover (amount and No. of transactions)
31. Normal or expected modes of transactions/ delivery channels
32. Wherever instructed/ advised, regulatory limits imposed such as: credit and debits/ deposit and withdrawals/ execution of financial transaction/ types of financial services allowed/ restricted.

E. Additional Information in case of" Trusts"

33. Whether the Trust is a Public Trust or Private Trust including foreign and national trust
34. Trust Deed whereby the Trust has been created;
35. Details of Settlor (this will also be available in the Trust Deed);
36. Objects of the trust (this will also be available in the Trust Deed);
37. Trustee of the trust (whether trustee is associated person of the settlor);
38. Description of each class or type of beneficiary (this information may also be checked from Trust Deed);
39. Details of any possibility of influence of any other person on trustee regarding management and control of trust property;
40. In the case of "Private Trust" if the beneficiary of a trust is also the beneficial owner of the trust, identification and verification of the beneficiary is required otherwise the name and CNIC of each beneficiary of a trust should be obtained.

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

Under the Prudential Regulations of the State Bank of Pakistan every high-risk transaction, that appear to be "Suspicious" are required to be reported to the State Bank of Pakistan by the commercial banks.

Moreover, in case of high-risk transactions, the (potential) clients need to provide a list of Shareholders, Directors etc. to prove the identity of ultimate beneficial owners.

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes. As explained in 2.1, the bank has to carefully scrutinize the applications, and from time-to-time KYC of the Customer is updated to effectively secure the transactions. If the client/Customer is not able to justify the Annual Turnover as assessed by the Bank, then it is reported to the State Bank of Pakistan.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

Yes, the banks are required to ask their (potential) clients to provide organizational structure to know the ultimate beneficial owners, furthermore, the banks develop the KYC report and for that report necessary information is required. However, the banks require Form-29 (containing details of all shareholders / directors of the Company), Articles of Association and Memorandum of Association, which helps to better understand the organizational structure of the Company.

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

Same as above in 2.1, however, there are certain requirements upon which Enhanced Customer Due Diligence is carried out. The criteria are as follows:

1. SBP REs is required to apply "EDD" in the following circumstances, including but not limited to:

- (a) Business relationships and transactions with natural and legal persons when the risks are higher.
- (b) Business relationships and transactions with natural and legal persons from countries mentioned in Counter Measures for High-Risk Jurisdictions Rules, 2020.
- (c) Politically Exposed Person "PEPs" and their close associates and family members.

2. In line with their functions and powers prescribed under relevant law, SBP REs may apply EDD measures which may include but not be limited to one or more of the following measures:

- (a) Obtaining additional information on the customer (e.g., occupation, volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial ownership.
- (b) Obtaining additional information on the intended nature of the business relationship/ transactions.
- (c) Obtaining information on the source of funds or source of wealth of the customer.
- (d) Obtaining additional information on the reasons for intended or performed transactions and purpose of transaction.
- (e) Taking reasonable measures to establish the source of funds and wealth involved in the transaction or business relationship to be satisfied that they do not constitute the proceeds from/ for crime.
- (f) Obtaining the approval of senior management to commence or continue the business relationship or execute the high-risk financial transaction by SBP Res
- (g) Where applicable, conducting enhanced monitoring of the business relationship by reviewing its nature and frequency of controls applied and selecting patterns of transactions that need further examination.
- (h) Where available, requiring the first payment to be deposited through an account in the customer's name with a bank subject to similar CDD standards

Furthermore, a Specified Due Diligence may also be carried out for certain customers, where there is apprehension of high risk towards Money Laundering and Terror Financing.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

The banks in Pakistan do not accept any applications to open an account for foreign shell companies, and they do not enter into or continue correspondent banking relations with a shell bank and would take appropriate measures when establishing correspondent banking relations, to satisfy them that their respondent banks do not permit their accounts to be used by shell banks and itself ensures that its platform is not used by any shell bank for execution of financial transaction or provision of any such financial services.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

As mentioned above in 1.2, the bank keeps the information private and if something appears to be suspicious, a Suspicious Transaction Report is prepared and forwarded to the Monitoring Unit. Although the Banks at all times require adequate information to its satisfaction, regarding the beneficial owners, and such information can be passed to the Government Authorities (in case the same is required by the Government due to any suspicion or any other reason), as the customers' personal information should not be shared with anyone as that would constitute breach of trust.

2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?

State Bank of Pakistan, Commercial Banks, Investment Banks, Development Financial Institutions, Specialized Banks, Islamic Banks, Micro-Finance Bank, Co-operative Banks, House Building Finance and Leasing Companies.

2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?

The State Bank of Pakistan is the only institution that is not open for any customer. Further, the Banks can refuse to open an account of any customer, if it is not satisfied.

3. Process and way of working

3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?

Yes. According to the recent Regulations provided by the State Bank of Pakistan known as "Anti-Money Laundering, Combating the Financing of Terrorism & Countering Proliferation Financing Regulations for State Bank of Pakistan's Regulated Entities, 2021" it is mandatory for the Banks to prepare a Know your Customer Report, Customer Due Diligence, and in some cases where there appears to be more risk Enhanced Due Diligence and Specified Due Diligence is carried out by the Bank.

3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?

Same as 2.1. responded above.

A Know your customer report and Due Diligence requires the above-mentioned information to be mentioned, for better ascertaining the scope and nature of the clients.

3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.

No. The banks do not impose a restriction on cash transactions, although tax upon certain percentage is set out for cash transactions. Whereas, in case of a company or an entity, the cash limit is set according to the Prudential Regulations of the State Bank and the category that they fall in.

Furthermore, the banks will need to know the information as stated in 2.1 if (potential) clients transfer cash more than the amount ascertained by the Know Your Customer Report.

3.4 Do the banks require proof of compliance with national and international laws and regulations?

The banks in Pakistan are regulated by the By-laws of State Bank of Pakistan, and certain proofs are also required as to comply with the laws of the country. When certain banks are collaborating/working at an international level, they have to comply with the laws and regulations of that country, and the customer has to do the needful to meet those requirements.

3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?

As stated above in 1.2, the bank prepares a Suspicious Transaction Report which is later on brought into the knowledge of the Monetary Unit. The Monetary Unit then proceeds further and take on Board the relevant Departments as stated in 1.2.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

The following are the requirements for record keeping as envisaged in the "Anti-Money Laundering, Combating the Financing of Terrorism & Countering Proliferation Financing Regulations for State Bank of Pakistan's Regulated Entities, 2021";

- 1) SBP REs shall ensure compliance with the following record keeping instructions for maintaining record of documents and information obtained digitally or in hard form for CDD and other purposes.
 - 2) The records of identification data obtained through CDD process including but not limited to copies of identification documents, account opening forms, KYC forms, verification documents and other documents along with records of account files and business correspondence, shall be maintained for a period of ten years after the business relationship is ended.
 - 3) SBP REs shall maintain all necessary records of transactions, both domestic and international, including the results of any analysis undertaken (e.g., inquiries to establish the background and purpose of complex, unusual large transactions) and shall also keep and maintain all record related to STRs and CTRs filed by it for a minimum period of ten years from completion of the transaction.
 - 4) The records shall be sufficient to permit reconstruction of individual transactions including the nature and date of the transaction, the type and amount of currency involved and the type and identifying number of any account involved in the transactions to provide, when necessary, as evidence if required by LEAs and other relevant authorities as per law. The transactions' records may be maintained in paper or electronic form or on microfilm, provided it is admissible as evidence in a court of law.
 - 5) Where transactions, customers or instruments are involved in litigation or where relevant records are required by a court of law or other competent authority, SBP REs shall retain such records until the litigation is resolved or until the court of law or competent authority indicates that the records no longer need to be retained.
 - 6) SBP REs shall satisfy, as soon as possible, any enquiry or order received from the relevant competent authorities, including LEAs and FMU for supply of information and records as per law.
- Under the AMLC, 2010, if a transaction appears to be "Suspicious" it shall be reported to the Monitoring Unit.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?

No. The bank accounts cannot be liquidated without giving reasonable opportunity of hearing to the Customer to explain the issue. However, the Banks can block any particular suspicious or illegal transaction(s) and the same can be reported. Moreover, the Banks may seek explanation of any transaction from the Customers and the Banks can also refuse to get indulge in the transaction if the same appears to be suspicious.

On the other hand, the account holder can make an objection by proving his/ her account is not used for any illegality or crime.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

Following are the categories and the requirements to open corporate bank account;

A) Sole Proprietorship:

- 1) Copy of the applicable valid identity document;
- 2) Any one of the following documents:
 - a) Registration certificate for registered concerns
 - b) Sales tax registration or NTN certificate, wherever applicable
 - c) Certificate or proof of membership of trade bodies etc., wherever applicable
 - d) Declaration of sole proprietorship on business letterhead
 - e) Account opening requisition on business letterhead

B) Small businesses and professions including freelance professionals:

- 1) Copy of the applicable valid identity document of the account holder/s
- 2) Any one of the following documents:
 - a) Registration certificate for registered concerns.
 - b) Sales tax registration or NTN certificate, wherever applicable.
 - c) Certificate or proof of membership of trade bodies etc., wherever applicable.
 - d) Proof of source of funds/ income

C) Partnership:

- 1) Copy of the applicable valid identity document of all partners and authorized signatories
- 2) All of the following documents:
 - a) Attested copy of 'Partnership Deed' duly signed by all partners of the firm
 - b) Attested copy of Registration Certificate with Registrar of Firms. In case the partnership is unregistered, this fact shall be clearly mentioned on the Account Opening Form.
 - c) Authority letter, in original, signed by all partners for opening and operating the account.

D) Limited Liability Partnership (LLP):

- 1) Copy of the applicable valid identity document of all partners and authorized signatories
- 2) All of the following documents:
 - a) Certified Copies of:
 - i) 'Limited Liability Partnership Deed/ Agreement'
 - ii) LLP-Form-III having detail of partners/ designated partner in case of newly incorporated LLP.
 - iii) LLP-Form-V regarding change in partners/ designated partner in case of already incorporated LLP.
 - b) Authority letter signed by all partners, authorizing the person(s) to operate LLP account.

E) Limited Companies/ Corporations:

- 1) Copy of the applicable valid identity document of all directors and authorized signatories
- 2) Certified copies all of the following documents:
 - a) Resolution of Board of Directors for opening of account specifying the person(s) authorized to open and operate the account;
 - b) Memorandum and Articles of Association;
 - c) Certified copy of Latest 'Form-A/Form-B'
 - d) Incorporate Form II in case of newly incorporated company and Form A/ Form C whichever is applicable; and Form 29 in already incorporated companies

F) Trust, Clubs, Societies and Associations etc.:

<p>1) Copy of the applicable valid identity document of:</p> <ul style="list-style-type: none"> a) all members of Governing Body/ Board of Directors/ Trustees/ Executive Committee, if it is ultimate governing body, b) all authorized signatories c) settlor, the trustee(s), the protector (if any), and the beneficiaries <p>2) Declaration from Governing Body/ Board of Trustees/ Executive Committee/ sponsors on ultimate control, purpose and source of funds etc.</p> <p>3) Certified copies all of the following documents:</p> <ul style="list-style-type: none"> a) Certificate of Registration/ Instrument of Trust b) By-laws/ Rules & Regulations c) Resolution/ Documentation of the Governing Body/ Board of Trustees/ Executive Committee, if it is ultimate governing body, authorizing any person(s) to open and operate the account <p>G) NGOs/ NPOs/ Charities:</p> <p>1) Photocopy (after original seen) of the applicable identity documents of all members of Governing Body/ Board of Directors/ Trustees/ Executive Committee, if it is ultimate governing body, and authorized signatories.</p> <p>2) Certified copies all of the following documents:</p> <ul style="list-style-type: none"> a) All relevant Registration documents/ Certificate of Incorporation/ license issued by SECP, as applicable b) Memorandum & Article of Association c) Incorporation Form II in case of newly incorporated company and Form B-29 in case of already incorporated company d) Resolution of the Governing Body/ Board of Directors/ Trustees/ Executive Committee, if it is ultimate governing body, for opening of account authorizing the person(s) to operate the account <p>3) Annual accounts/ financial statements or disclosures in any form, which may help to ascertain the detail of its activities, sources and usage of funds in order to assess the risk profile of the prospective customer.</p>	<p>4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?</p> <p>Yes, as stated above in 2.1 and 4.1</p>
<p>5. Documents needed to open a corporate bank account</p>	
<p>5.1 What are the requirements for opening an individual account?</p> <p>The Bank requires prescribed application along with National Identity Card, Proof of Residence and Official Address (Paid Utility Bills, Rent Agreements, Property Ownership Document), a document reflecting cash flow of the individual and source of earnings including Salary Slip, Rental Documents of a property, Share Profits, Agriculture Gain Slips etc.</p> <p>These are initial documents required. However, the Bank may require further documents as mentioned above in clause 2.1.</p>	
<p>5.2 What documents are needed in order to open an individual bank account?</p> <p>Same as stated in 5.1</p>	

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

Yes. Basically, banks are not obligated to open an account for anyone. Moreover, the Bank can refuse to open a bank account if it found any application as incomplete, incorrect or the Bank is not satisfied with the documents furnished by the Individual.

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?

(Potential) clients can ask the Bank to review its decision and alternatively they can lodge a complaint against that Bank to the State Bank of Pakistan.

6. Digital-/Cryptocurrency**6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.**

No. Pakistan does not recognise digital/ cryptocurrency. However, it is considering as how and under what circumstances digital/ cryptocurrency can be legalised.

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

No. Same as clause 6.2

7. Opening an account without proof of Residency**7.1 Can an account be opened without proof of Residency?**

No, proof of residency is must.

A Non-Resident cannot open a bank account. Although if the residency of a relative is stated, than a NICOP will be required.

7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.

Not applicable as account cannot be opened without proof of residency.

8. Recent developments in retail banking**8.1 What recent developments in retail banking have taken place?**

In Pakistan facilities like financing, credit cards, consumer loans are available to the Customers. However, these facilities are developing day by day as the banks are thriving to facilitate the Customers at a large scale.

Moreover, almost every bank has launched their mobile apps in order to facilitate the retail banking. Moreover, few banks are offering a loan of up to 1 million Pak Rupees loan by applying on the “app” and without even visiting the branch if the customer is maintaining its bank account with that particular bank.

8.2 What retail banking services are offered to customers?

Saving accounts, credit cards, lease finance, mortgages, e-banking services, phone banking applications, insurances, investment funding, term deposit certificates etc.

9. Recent developments in Anti-Money Laundering (AML) and online banking

9.1 What recent developments in AML and online banking have taken place?

With the increasing threats of money laundering and terror financing, which has been highlighted at a larger scale taking into account and holding numerous political entities and public figures in Pakistan for the offence of Money Laundering, the laws and regulations are changing from time to time to combat it.

Recently the State Bank of Pakistan has constituted "Anti-Money Laundering, Combating the Financing of Terrorism & Countering Proliferation Financing Regulations for State Bank of Pakistan's Regulated Entities, 2021" which surpasses the prudential regulations previously issued by the State Bank of Pakistan, are currently applicable.

However, Anti-Money Laundering, 2010, is intact and various amendments are made to effectively tackle money laundering

Pakistan has also complied with almost every condition as set up by the Financial Action Task Force ("FATF"), which is the global money laundering and terrorist financing watchdog.

Company Name: ALI & QAZI (ADVOCATES & ADVISORS)
Country: PAKISTAN
Office Address: Office No.8, First Floor, Dayal Singh Mansion, The Mall, Lahore
Cell No.: +92 321 9407900, +92 335 9407900
Fax: +92 42 3715163
URL: www.aliandqazi.com
Author: Ali Raza Kabir, Advocate
e-mail: arkabir3@gmail.com

Company & Author details

“Ali & Qazi” is a Pakistan based corporate law firm, which provides wide range of legal services including litigation, financial advisory, commercial consultancy, drafting agreements/contracts national and international arbitration services tailored for large organizational span in multiple cities, services for small and medium entrepreneurs, and personalized legal solutions for individual and startup businesses.

“Ali & Qazi” is providing legal services to a variety of domestic and international clients including corporations, financial institutions, multinational corporations and government agencies etc. “Ali & Qazi” always focus on specific needs of its clients and work with dedication to serve them best legal solutions. The services of “Ali & Qazi” are blended with best legal approach and high management practices for giving its clients best work experience.

Author: ALI RAZA KABIR, ADVOCATE



Address: Office No.8, First Floor, Dayal Singh Mansion, The Mall, Lahore, Pakistan
Tel: +92 321 9407900
e-mail: arkabir3@gmail.com
LinkedIn URL: <https://www.linkedin.com/in/ali-raza-kabir-7b079716/>
Company URL: www.aliandqazi.com

Ali Raza Kabir started his legal practice in 2004. He did his LLM from the University of Salford, UK. He has also completed short courses in Business Law and European Commercial Law from “University of Antwerp, Belgium” and “Friedrich University, Germany” respectively. He is legal consultant to a number of banks, leasing companies and information technology companies. He is entitled to appear in all high courts of Pakistan.

He has expert hands on banking/civil/corporate/constitutional law and white-collar crimes etc. He has served as the Member Executive of LBA twice and has acted as the Chairman Judicial Reforms Committee of LHC Bar Association. He is also member of the visiting faculty at Pakistan College of Law.

1. Legal overview - Switzerland

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

The Swiss financial market legislation is spread over numerous laws and ordinances. The principal law is the Financial Market Supervisory Act (*Finanzmarktaufsichtsgesetz*) (FINMASA), which serves as an "umbrella law" for the other legislation regulating financial market supervision. Under this umbrella law, the following statutes are relevant:

- Mortgage Bond Act (*Pfandbriefgesetz*) (MBA).
- Collective Investment Schemes Act (*Kollektivanlagengesetz*) (CISA).
- Banking Act (*Bankengesetz*).
- Financial Institutions Act (*Finanzinstitutsgesetz*) (FinIA), replacing the Stock Exchange Act (*Börsengesetz*) (SESTA).
- Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) (ISA).
- Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (*Finanzmarktinfrastukturgesetz*) (FMIA).
- Financial Services Act (*Finanzdienstleistungsgesetz*) (FinSA).

These laws regulate the conditions for approval and licences for their corresponding activities, as well as their oversight and monitoring by the supervisory authorities.

The following additional laws are also relevant:

- National Bank Act (*Nationalbankgesetz*) (NBA), which primarily focuses on the stability of the Swiss financial system, but also contains regulations setting bank supervisory standards.
- Anti-Money Laundering Act (*Geldwäschereigesetz*) (AMLA) and its related Swiss Financial Market Supervisory Authority FINMA (FINMA) Ordinance, which also provide for supervisory standards, but with more limited scope.
- Consumer Credit Act (*Konsumkreditgesetz*) (CCA), which provides regulatory standards for lending.

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

Lead bank regulators

The Financial Market Supervisory Authority FINMA (FINMA) is the supervising authority for:

- Banks.
- Securities exchanges and other financial market infrastructures.
- Securities firms.
- Collective investment schemes.
- Insurance companies.
- Mortgage issuance banks.
- Directly supervised financial intermediaries under the AMLA.
- Fund management companies.
- Asset managers and trustees.
- Trade assayers, as defined in the Precious Metals Control Act (*Edelmetallkontrollgesetz*) (PMCA).

- Managers of the assets of occupational pension schemes, previously supervised by the Occupational Pension Supervisory Commission (from 1 January 2020).
- Supervisory Organisations over Asset Managers.
- Prospectus Review Bodies under FinSA.

FINMA's supervision is focused on:

- Strengthening the protection of individuals (that is, investors, depositors and insured persons).
- The proper functioning and stability of the overall financial system.

FINMA authorises the business activities of companies and organisations that are subject to its supervision. FINMA's role involves:

- Monitoring the supervised enterprises to ensure compliance with:
 - statutes;
 - ordinances;
 - directives;
 - regulations; and
 - conditions that must be fulfilled for conducting business.
- Imposing sanctions.
- Providing administrative assistance to other regulators, national authorities and international authorities.
- Taking regulatory actions.
- Participating in the drafting process of statutes and the corresponding ordinances.
- Issuing circulars, policies and standards.
- Promulgating its own regulations, as far as it is empowered to do so.
- Honouring self-regulation by the various institutions, distinguishing between:
 - voluntary (or autonomous) self-regulation (such as codes of conduct issued by professional associations);
 - self-regulation that is recognised by FINMA as a minimum standard; and
 - compulsory self-regulation based on a mandate from the legislator.

Other authorities

In addition to FINMA, the following organisations and agencies perform certain supervisory or supervisory-like functions:

- External auditors control compliance by banks with legislation and report to FINMA or other authorities on possible or actual infringements of law (system of indirect supervision).
- Self-regulated supervision, as provided for by the statutes, remains subordinate to the control and surveillance of the corresponding (state) agencies. For example, the SIX Exchange Regulation AG (a wholly-owned subsidiary of SIX Group AG) supervises the admission of stocks and bonds for trading on the SIX Swiss Exchange and the observance of the issuer's obligations. This supervision is, in turn, subordinate to control and authorisation by FINMA.
- Banks and securities firms are subject to further principles and requirements of self-regulation in the form of numerous recommendations, directives and guidelines issued by the Swiss Bankers Association (SBA). FINMA deems these rules to reflect minimum regulatory standards and supervision is controlled by external auditors and banking law auditors. If a bank violates these rules, it may be subject to sanctions by FINMA or the SBA (or both).

- Independent portfolio managers and trustees require authorisation from FINMA but will thereafter be supervised by licensed supervisory organisations.

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

Legislative framework and key directives

In Switzerland, the following laws and regulations exist in the field of AML: The AMLA, as the most important and primary act in this area of law; the anti-money laundering ordinance; the FINMA anti-money laundering ordinance; the Federal Gaming Board anti-money laundering ordinance; the Federal Department of Justice and Police anti-money laundering ordinance on the MROS; revised agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence, 2020("CDB 20", soft law); the regulations of the 11 self-regulatory organisations ("SROs"), approved by FINMA (soft law); and FINMA circular no 2011/1 (rules providing guidance to assess whether or not a certain business activity qualifies as financial intermediation according to AMLA; soft law). Further, the Penal Code contains provisions relevant in the field of ML/TF (e.g., art. 305bis [money laundering], art. 305ter [insufficient diligence in financial transactions and right to report], art. 260ter [criminal organisation] or art. 260quinquies [financing of terrorism]).

Regulators and monitoring authorities

The financial intermediaries, which form the first operational line of defence in the fight against ML, are supervised by the FINMA. In addition to direct supervision by FINMA, the AMLA also provides for the possibility of supervision by a SRO for certain financial intermediaries. The SROs, which in turn are subject to the supervision of FINMA, issue regulations specifying how the obligations arising from the AMLA are to be fulfilled. They are further under a duty to carry out regular audits to ensure that the affiliated financial intermediaries comply with their obligations and, if these obligations are violated, that appropriate sanctions are imposed.

1.4 Is an application for a business account with a bank located in your country necessary?

Yes, this is necessary.

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Legal requirements for KYC

The legal requirements for KYC due diligence are set out in the laws, ordinances, regulations etc. mentioned above (1.2).

As of today, the most important duties of legal entities and individuals subject to AML regulations are the following:

- When establishing a business relationship, the financial intermediary must verify the identity of the contracting partner on the basis of an official document of evidentiary value, e.g. passport, excerpt from the commercial registry or equivalent (art. 3(1) AMLA);
- the financial intermediary must establish the identity of the beneficial owner of assets involved with a business relationship/ transaction (art. 4(1) AMLA);
- if, in the course of the business relationship, doubt arises as to the identity of the contracting partner or of the beneficial owner, the verification of identity or establishment of identity must be repeated (art. 5(1) AMLA);
- the financial intermediary is required to ascertain the nature and purpose of the business relationship. The financial intermediary thereby pursues a so-called risk-based approach (art. 6(1) AMLA);

- the financial intermediary must keep records of transactions carried out and of information it is required to obtain under the AMLA (art. 7(1) AMLA); and financial intermediaries must take the measures that are required to prevent ML and TF in their field of business.

They must in particular ensure that their staff undergoes adequate training and that compliance is monitored (art. 8 AMLA).

The diligence duties of financial intermediaries are further detailed in arts. 9a et seqq. of the FINMA anti-money laundering ordinance and the CDB 20. The diligence duties of dealers/merchants are further detailed in art. 17 et seqq. of the anti-money laundering ordinance. With the help of computer-based verification systems, financial intermediaries regularly check the names of contracting partners and beneficial owners against databases providing KYC relevant information (e.g., World-Check etc.). In the course of this review procedure, sanction lists of the UN, EU and other international bodies respectively foreign jurisdictions, as well as information on criminal proceedings or convictions are taken into account to assess legal and reputational risks associated with a particular relationship. As far as dealers/merchants are concerned, art. 8a (1) AMLA states due diligence duties that must be fulfilled in case of cash payments in excess of 100,000 Swiss francs. Art. 8a (2) AMLA further regulates in which cases they must clarify the economic background and purpose of a transaction.

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?

No, this is not necessary.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

No, there are no further legal requirements.

1.8 Is cybersecurity and data privacy formally regulated?

Cybersecurity:

Switzerland does not know a special regulation regarding cybersecurity. Switzerland knows a so-called Coordination structure. Switzerland has set up an overarching structure with the Federal Council Cyber Committee, the cyber security delegate, and the Cyber Security Competence Centre. All these institutions play a role in the coordination of cybersecurity at the federal level.

Data Privacy

In Switzerland, data privacy is regulated by the Federal Act on Data Protection of 19 June 1992 (DPA) and the Ordinance to the Federal Act on Data Protection of 14 June 1993.

Further, every Swiss canton has its own data protection laws with respect to data processing by cantonal authorities.

Switzerland is not a member of the European Union and hence does not have to comply with the EU General Data Protection Regulation (GDPR) or any other directives in this field. However, a comprehensive revision of the Data Protection Act is pending which provides for substantial alignment with the GDPR provisions.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

- a valid passport,
- verification of the origin of your income (this could be a statement from your last **bank**),
- confirmation of the address you listed (they might choose to send some mail to your address to verify this).

Any other document necessary in a due diligence procedure set up by the bank.

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

see 2.5

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes, bank do have to look very carefully at each application; according to the KYC (know your customer) rules bank will check the back ground of each application in respect to the following the following topics:

- personal background of the applicant
- source of funds
- use of funds
- purpose of account

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

See 2.3

The banks will check all background of each client; there are legally no formal requirements on how the check a customer. It is up to each bank to decide what kind of documents are necessary to check an application.

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

Swiss bank observes the due diligence recommendations of FATF

The CDD measures to be taken are as follows:

- Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
- Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements, this should include financial institutions understanding the ownership and control structure of the customer.
- Understanding and obtaining information on the purpose and intended nature of the business relationship.
- Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Financial institutions should be required to apply each of the CDD measures shown above, but should determine the extent of such measures using a risk-based approach

Verify identity before doing business

Financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.

Countries may permit financial institutions to complete the verification as soon as reasonably possible following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business.

Where the financial institution is unable to comply with the applicable CDD requirements mentioned above, it should be required not to open the account, commence business relations or perform the transaction. Further, it should be required to terminate the business relationship and should consider making a suspicious transactions report in relation to the customer.

These requirements should apply to all new customers, although financial institutions should also apply this recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times.

Record-keeping

Financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities.

Such records must be sufficient to permit reconstruction of individual transactions, including the amounts and types of currency involved, in order to give evidence, if necessary, for prosecution of criminal activity.

Financial institutions should be required to keep all records obtained through CDD measures, account files and business correspondence, including the results of any analysis undertaken, for at least five years after the business relationship is ended, or after the date of the occasional transaction. This includes copies of licenses and passport information and other documentation.

Financial institutions should be required by law to maintain records on transactions and information obtained through the CDD measures. CDD information and the transaction records should be available to domestic competent authorities upon appropriate authority.

Politically exposed persons

Financial institutions should be required, in relation to foreign politically exposed persons (PEPs) to perform normal customer due diligence measures, including:

- (a) have appropriate risk-management systems to determine whether the customer or the beneficial owner is a politically exposed person;
- (b) obtain senior management approval for establishing (or continuing, for existing customers) such business relationships;

(c) take reasonable measures to establish the source of wealth and source of funds; and

(d) conduct enhanced ongoing monitoring of the business relationship.

Financial institutions should be required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organization.

In cases of a higher risk business relationship with such persons, financial institutions should be required to apply the above measures. The requirements for all types of PEP should also apply to family members or close associates of such PEPs.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

No, there are no types of financial institutions prohibited. For most of financial institutions a permission/license is requested.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

No, no such information shall be provided to government authorities. In a criminal procedure such information have to be handed over to the state attorney.

2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?

State-owned banks

Switzerland has one state-owned bank on a federal level (which is a postal bank that was spun off from the former Swiss postal organisation).

In addition, the cantons may own or operate banks (cantonal banks (Kantonalbanken)) for their own political or economic goals.

In Switzerland, the term cantonal bank denotes a category of retail banks in which cantonal governments hold significant stakes and shareholder voting rights (more than one-third).

Switzerland has been a federal state since 1848 and is historically made of cantons. Each Canton has its own constitution and laws. Each canton has its own cantonal constitution. Swiss cantons are the largest levels of regions inside of Switzerland. Indeed, the cantons themselves manage many aspects of everyday life; they generally oversee everything from schools and police forces to healthcare and taxes. Accordingly, most cantons have their own bank.

Cantonal banks are banks constituted on the basis of a cantonal law in the form of an establishment (Anstalt) or corporation. For a bank to qualify as a cantonal bank, the canton must hold a participation of more than one-third of the capital and possess more than one-third of the voting rights in the bank. In addition, the canton can guarantee the liabilities of the bank, either in full or in part. Of the 24 existing cantonal banks, 21 benefit from a full guarantee. Cantonal banks are generally subject to the Banking Act as are all other banks (but some special cantonal regulations may apply).

Universal banks, commercial and retail banks

The Swiss banking system is based on the model of universal banking. This means that all banks can provide all core and ancillary banking services, such as:

- Deposit taking.
- Lending.
- Asset management.
- Investment advice.
- Payment transactions.

If combined, the engagement in these normally requires universal banks to obtain two licences, namely a banking licence and a securities firm licence.

Investment banks

Swiss law does not recognise the concept of investment bank or any related licensing category. If investment banks conduct securities trading activities, they need a securities firm licence. On the contrary, if their business is limited to unregulated activities (for example, mere advisory services) they do not need a licence. Investment banks that do not hold a banking licence must not use the term "bank" in their corporate or marketing name.

Private banks

There is a fundamental difference between private bankers (*Privatbankiers*) and private banks (*Privatbanken*):

- **Private bankers.** According to Swiss statutory law, these are persons who run banks in the legal form of individual proprietorships or general and limited partnerships. The distinguishing feature of private bankers is that one or more members of the company bear unlimited and joint and several liability for the bank's commitments.
- **Private banks.** These are usually organised as corporations. Like private bankers, they focus their business activities on asset management and investment advice for wealthy private clients, the term "private" describing the services or clients they focus on. Apart from that, private banks do not differ from other banks.

The main difference between private banks and private bankers is a matter of liability: the liability of private banks is limited through the legal form chosen, whereas private bankers have an unlimited personal liability.

Other banks

The Banking Act also mentions savings banks (*Sparkassen*), but the use of the term "savings" is not relevant to either the organisational form or to the liability of the bank in question.

Regulation of systemically important financial institutions (SIFIs)

After the financial crisis of 2007/2008, the Swiss legislator started to work intensively on a revision of banking regulation, and in particular of the Banking Act, to include legal provisions for SIFIs. This comprehensive reform is known under the name "Too Big to Fail" (TBTF). The TBTF amendment to the Banking Act came into force on 1 March 2012, and the TBTF framework was subsequently significantly strengthened through several amendments to the Banking Ordinance and the Capital Adequacy Ordinance. Banks, financial groups and bank-dominated financial conglomerates whose failure would do considerable harm to the Swiss economy and financial system are considered to qualify as systemically important financial institutions (SIFIs), often also referred to as systemically important banks (SIBs), under the revised framework. SIFIs which are designated as SIFIs by the Swiss National Bank (SNB) are subject to particular requirements on the following:

<ul style="list-style-type: none"> • Capital. • Liquidity. • Large exposures. • Organisation. <p>To date, the SNB has designated two internationally active banks (G-SIBs) and three domestic banks (D-SIBs) as SIFIs.</p>
<p>2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?</p> <p>No, basically such restrictions do not exist.</p>
<p>3. Process and way of working</p>
<p>3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?</p> <p>Yes, see 2.5</p>
<p>3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?</p> <p>See 2.5</p>
<p>3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.</p> <p>Yes, over an amount of CHF 100'000.00.</p>
<p>3.4 Do the banks require proof of compliance with national and international laws and regulations?</p> <p>See 2.5</p>
<p>3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?</p> <p>Yes, usually to the Money Laundering Reporting Office Switzerland (MROS): The Money Laundering Reporting Office Switzerland (MROS) at fedpol is Switzerland's central money laundering office and functions as a relay and filtration point between financial intermediaries and law enforcement agencies. Under the provisions of the Anti-Money Laundering Act, it receives and analyses suspicious activity reports in connection with money laundering, terrorist financing, money of criminal origin or criminal organisations and, where necessary, forwards them to the law enforcement agencies for follow-up action.</p>
<p>3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?</p> <p>All transaction have to be recorded; there is no special requirement to report large currency transaction. Only in case of a presumable money laundering case a transaction has to be reported to the MROS (see 3.5).</p>

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g. objection procedure / legal procedure)?

Yes, applicable are the general terms of condition of each bank. There is no legal procedure in such a case. A client may have the possibility to submit its case to the Swiss banking ombudsman.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

Basically, the same documents as to be provided in any other case. An extract from a company register is always welcome.

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company bylaws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

The bank is only required to verify the UBO.

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

The individual needs to pass the bank's due diligence check.

5.2 What documents are needed in order to open an individual bank account?

See 2.3

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

Yes, banks in Switzerland are not obliged to enter into a commercial relation with a third party. There are no requirements to refuse to open an individual account.

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?

There is no legal procedure in such case.

6. Digital-/Cryptocurrency

6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.

In Switzerland, cryptocurrency-related activities are not prohibited.

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

In Switzerland, making payments with cryptocurrency is not a regulated activity and there are no reporting requirements to be met when making payments when such payments are made.

7. Opening an account without proof of Residency

7.1 Can an account be opened without proof of Residency?

Yes, in case the client passes the due diligence check.

7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.

There is no special procedure in this respect.

8. Recent developments in retail banking

8.1 What recent developments in retail banking have taken place?

Instead of going back to the 'old ways' over time, banks and their clients can benefit by 'locking in' at least some of the new ways established during the last two years, especially due to Covid-19:

- Finally a breakthrough for online and mobile channels, not just for transactions but also for advisory and sales.
- With fewer physical interactions and less handling of cash, banks may be able to reduce their branch and ATM networks to save costs, while transforming the role of the branch towards higher value activities.
- Remote interactions (such as video) and home working can substantially improve employee productivity.
- Traditional barriers of rapid change – compliance and feasibility – have already turned out to be manageable given the rapid response to the COVID-19 restrictions.
- The case for change is strong: better client experience, better employee experience, lower costs, higher profit. And in addition, a major contribution to the sustainability agenda.

8.2 What retail banking services are offered to customers?

The majority of Swiss banks are universal banks and therefore offer all kind of financial services.

9. Recent developments in Anti-Money Laundering (AML) and online banking

9.1 What recent developments in AML and online banking have taken place?

On 19 March 2021, both chambers of the Swiss parliament approved the revision of the Money Laundering Act. The bill implements the federal government's financial market policy strategy for a competitive Swiss financial centre, and takes into account the key recommendations of the Financial Action Task Force (FATF) country report on Switzerland. It is designed to ensure the continued integrity - and thus competitiveness - of Switzerland as a financial centre. The identity of beneficial owners of financial accounts will now be checked more closely and client data will be updated more frequently.

Company name: Ruggle Partner
Country: Switzerland
Office IP address:
Office address: Limmatquai 4, CH-8001 Zürich; Hirschmattstrasse 23, CH-6003 Luzern
Tel: +41 43 244 82 22
Fax: + 41 43 244 82 33
URL: www.rugglepartner.ch
Author: Peter Ruggle
e-mail: peter.ruggle@rugglepartner.ch

Company & Author details

Ruggle Partner is a boutique law firm. We offer individuals and companies in set-up, growth, crises and change phases our extensive knowledge and experience. We advise national and international clients in all matters of corporate development, transactions (M&A), tax, contract negotiations, company restructuring and succession planning. We advise and support clients in legal matters, mediate conflicting situations and accompany them throughout their business and private life.

The services of Ruggle Partner is characterised by consistent focus on finding holistic solutions, accomplishing the economic goals of our clients and protecting their interests. Ruggle Partner approaches our work with creativity and commitment. Our aim is to find not only legally sustainable answers but also the best commercial solution.

Our clients have access to an exclusive global network.

Author 1 name: Peter Ruggle



Address: Limmatquai 4, CH-8001 Zürich // Hirschmattstr. 23, CH-6003 Lucerne // Switzerland
Tel: + 41 43 244 82 22
e-mail: peter.ruggle@rugglepartner.ch
LinkedIn URL: <https://www.linkedin.com/in/peter-ruggle-7278992/>
Company URL: www.rugglepartner.ch
Company LinkedIn URL: <https://www.linkedin.com/in/peter-ruggle-7278992/>

Peter Ruggle, founder of Ruggle Partner, studied Law at the University of St. Gallen; he worked at a local district court, at the end as Judge. After his bar exam he was employed with a well-known law firm in Zurich. Peter Ruggle publishes on a regular basis in the field of Commercial and Corporate Law, Financial Services Law, FinTech and Dispute Resolution.

1. Legal overview -Thailand

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

The main laws and regulations that regulate Thailand banking system such as:

- Bank of Thailand Act
- Currency Act
- Exchange Control Act
- Payment System Act
- Financial Institution Business Act
- Emergency Decree on Asset Management Company
- Credit Information Business Operation Act
- Emergency Decree Improving the Debt Management of Loan Made by the Ministry of Finance to Assist the Financial Institutions Development Fund
- Emergency Decree on the Provision of Financial Assistance for Entrepreneurs Affected by COVID-19 Pandemic, B.E.2563 (2020)
- Emergency Decree on the Maintenance of Stability of the Financial System and Economic Security of the Country, B.E.2563 (2020)
- Emergency Decree on the Provision of Assistance and Rehabilitation of Business Operators Impacted by the Spread of the COVID-19 Pandemic, B.E. 2564 (2021)
- Anti-Money Laundering Act, B.E. 2542
- The Prevention and Suppression of Financial Support for Terrorism and the Proliferation of Weapons of Mass Destruction Act, B.E. 2016

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

The Anti Money Laundering Office (AMLO) is a government agency which has the power and duty to establish regulations and ensure compliance with the law on the prevention and suppression of money laundering as well as being an audit and analysis unit of financial information related to money laundering.

The Anti Money Laundering Office (AMLO) of Thailand has establish regulations about Anti Money laundering in Thailand such as:

- Anti-Money Laundering Act, B.E. 2542
- The Prevention and Suppression of Financial Support for Terrorism and the Proliferation of Weapons of Mass Destruction Act, B.E. 2016
- Ministerial Regulations issued under the Anti-Money Laundering Act
- Ministerial Regulations and Acts issued under the Act on Prevention and Suppression of Financial Support for Terrorism and Proliferation of Weapons of Mass Destruction.
- Ministerial Regulations Determining Government Sectors of the Anti-Money Laundering Office

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

All financial institutions operating in Thailand are obliged to report such transactions to the Anti Money Laundering Office (AMLO) when it appears that the transaction are:

- (1) using cash which exceeds the amount prescribed in the Ministerial Regulation;
- (2) a transaction related to assets whose value exceeds those prescribed in the Ministerial Regulation; or
- (3) suspicious transactions Regardless of whether the transactions under (1) or (2)

The AMLO will review reports and information about transactions, if there is a reason to believe that there may be a transfer, disposal, manipulation, concealment of any property related to the commission of an offense, the Transaction Committee shall have the power to temporarily seize such property not more than ninety days.

1.4 Is an application for a business account with a bank located in your country necessary?

According to the company registration process, it is necessary for foreigners to have a bank account in order to register a company in Thailand. So it is mandatory for a registered company to have a bank account which is located in Thailand.

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Yes, the banks are obliged to scrutinize applications thoroughly to comply with the banking laws and regulations. Financial institutions require customers to identify their identity every time before doing a transaction as prescribed in the Ministerial Regulation.

Moreover, the ultimate responsibilities are to ensure that applications comply with AMLO regulations (AMLO Requirements answered in part 1.3). In Addition, the information about transactions which financial institutions did for customers must maintain adequate records for a minimum period of five years.

The identification of suspicious transactions submitted to the AMLO, a report of any suspicious transactions or activities that may indicate money laundering or other attempts to cover the true identity of customers or ownership of assets and establish adequate internal control measures, will assist in the prevention and detection of money laundering activities.

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?

According to Foreign Business Act, B.E. 2542 (1999), there is no regulation for such matters.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

There are several criteria for foreign to be eligible for a bank account in Thailand.

In case foreigners have work permits, use a passport and work permit or a non-Thai identification document.

In case foreigners do not have work permits, There is some financial institutions that allow foreigners who don't have work permits to open an account by using a passport along with a certificate issued by an agency or person.

1.8 Is cybersecurity and data privacy formally regulated?

National Cyber Security Committee: NCSC established Cyber Security Act B.E. 2562 which is Measures or actions established to prevent, and reduce the risk of threats. Cyber from both inside and outside the country affects the security of the state, economic stability, military security and peace within the country to be able to prevent, and reduce risks from cyber threats in a timely manner.

Moreover, Thailand has a data privacy regulation which is the Personal Data Protection Act (PDPA), the data controller may "not" collect, use or disclose personal data without prior or at that time consent to the data owner. Except for the provisions of this Act or other laws so that it can be done. The PDPA will be effective on June 1st, 2022.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

As for Bank of Thailand regulations, it requires financial institutions to act according to KYC policy in which banks have to identify and verify the bank account applicants before the bank starts to conduct business with the customer.

Foreigners must have work permits that prove you are working in Thailand. (It depends on the regulation of each financial institution).

These regulations are covered for both Thai native citizens and foreigners who are working in Thailand.

For non-resident foreigners Thailand also has an FCD account the details are as follow:

For foreigners with Thai permanent residency

- Alien Certificate or Certificate of Residency or Passport
- A Copy of House Registration **Foreigner with a work permit**
- Passport
- Work Permit

Foreigners without a work permit

- Passport and one of the following documents:
- A reference letter issued by one of the following institutes or organizations:
 - Embassy or international organization
 - International institution, e.g. pension certificate issued by overseas organization
 - An overseas bank where the customer holds an account sent via SWIFT
 - Trusted individuals such as a bank staff member or customer, government officer, director of a private company, government or private educational institutes located in Thailand trusted by the Bank
 - Trusted companies, e.g., an employment letter from the company if the customer is in the process of applying for a work permit.

Other documents with the customer's name and address can be used as supporting evidence for opening a bank account (in addition to the documents stated above) such as a lease agreement or apartment sale agreement.

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

The obligation to accept an applicant is upon the regulated financial institution. Each bank therefore has its own mechanism that meets the minimum requirements to accept an application.

2.3 Do the banks have to look very carefully at each application before they can make a decision?

Yes. All banks in Thailand are required to conduct a detailed due diligence for each application according to the banking regulation and guidelines which each applicant needs to provide identification evidence to the financial institution.

Financial institutions shall have the duty to report suspicious transactions to the AMLO. (detail in part 1.3)

In the event that it appears later there is a reasonable ground to believe that any transaction has been carried out but has not been reported, Financial Institutions shall report to the Office of the Anti-Corruption Commission for acknowledgement without delay.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

<p>No, banks are not required for organizational structure. However, banks may require business transactions such as commercial invoice to prove the existence of business.</p>
<p>2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?</p> <p>As per AMLO regulations, obliged parties including banks shall complete the required procedures for identification of their customers. The provided information must be validated during the application process which normally the financial institution will need entity to provide information as follows:</p> <ul style="list-style-type: none"> • Copy of ID card (Only front of the card) • Copy of resident registration (Only if the ID card does not show the address) • Copy of passport (In case of foreigners) • Commercial registration certificate (Must indicating the name of the applicant for registration) <p>There might be differences in some certain required documents depending on the requirement of each financial institution.</p> <p>For the due diligence requirement, financial institutions must be able to analyse the source of their customers' funds to identify suspicious activities and they have to report suspicious transactions to AMLO.</p> <p>In the event that the customer does not provide the information requested by the bank, the bank has the right not to open an account for the customer as well. The process of KYC/CDD will reduce the risk of supporting financial channels for terrorists and maintain the image of the financial institution</p>
<p>2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?</p> <p>According to Bank of Thailand, there is no regulation for prohibited foreign bank account. it is depend on activity and service that foreign bank is able to provide in Thailand. However, foreign banks must contact the Bank of Thailand (BOT) to request to operate in Thailand.</p> <p>For non-resident foreigners in Thailand FCD Account would be preferred in Thailand, it is for Non-Residents foreigners who would like to hold incoming foreign funds without needing to immediately convert them to baht or for those living in Thailand who want to convert and save their Thai earnings in a foreign currency.</p>
<p>2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?</p> <p>Yes, the Bank of Thailand (BOT) has established regulations for financial institutions to act accordingly with Know Your Customer (KYC) rules in which financial institutions must be able to (1) identify your customers and (2) verify your customers before opening a bank account. Financial institutions are able to use Face-to-Face or Non Face-to-Face methods to identify applicants which require accurate and current information provided to financial institutions in form of required documents. (detail in part 2.5)</p>
<p>2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?</p> <p>The type of banking institutions in Thailand consists of:</p> <ul style="list-style-type: none"> • Commercial Bank • Saving banks • Bank for Agriculture and Agricultural Cooperatives

<ul style="list-style-type: none"> • Government Housing Bank • Credit Union • Saving cooperative
<p>2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?</p> <p>All types of banks are available for both legal and natural persons but some banks have specific support for some sectors such as SME bank, Bank for Agriculture and Agricultural Cooperatives, etc.</p>
<p>3. Process and way of working</p>
<p>3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD))?</p> <p>Yes. Financial institutions in Thailand realize the importance and impact or damage that will occur covering environmental operations Social and Governance (ESG) including the impact on the Bank's reputation if it is involved or involved in money laundering and financial support for terrorism in order to prevent the bank as a tool of money laundering and terrorist financing in the legitimate use of the proceeds from various crimes. Therefore, anti-money laundering and financial support policies have been established. to terrorism (AML/CFT Policy) in accordance with international practice, rules or official policies as well as establishing procedures for knowing customers / checking for false information True about customers (Know Your Customer /Customer Due Diligence : KYC/CDD) in accordance with international standards.</p>
<p>3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?</p> <p>In Thailand, financial institutions may require information such as:</p> <ul style="list-style-type: none"> • Customer credit term, • Sales forecast, • Market share, etc.
<p>3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.</p> <p>Yes, cash transactions are allowed in Thailand. However, there are certain regulations that financial institutions need to follow, which is the transaction which relates to cash transaction that is valued from two million baht or more / trading transaction, foreigner exchange transaction that value more than five hundred thousand baht or more, both kinds of transaction must be reported to AMLO.</p>
<p>3.4 Do the banks require proof of compliance with national and international laws and regulations?</p> <p>Compliance with national and international laws and regulations are required by all banks in Thailand.</p>
<p>3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?</p> <p>Yes, financial institutions have to comply with regulations according to Guidelines on Transaction Reporting for Banking Financial Institutions B.E. 2562. For the due diligence requirement, financial institutions must be able to analyse the source of their customers' funds to identify suspicious activities and they have to report suspicious transactions to AMLO.</p>

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

Large currency transactions may also be considered within suspicious transactions (two million baht or above) and if such transaction is deemed suspicious, then the relevant bank shall report such transaction to the AMLO. The recordkeeping must be at least five years.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?

For most banks, the banking services agreement provides that the bank reserves the right to suspend/terminate their services when the bank notices illicit activities. However, In normal cases the bank will not terminate an inactive account but will charge a maintenance fee if the remaining balance in the account is less than 2,000 Baht. (the maintenance fee depends on each bank regulations)

In addition, if an inactive account has no remaining balance in the account for more than 1 year then the bank will terminate this kind of account.

For the objection may be submitted to the Bank of Thailand (BOT). The Authority will get the relevant bank's opinion on the matter and make a decision accordingly.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

For Juristic Persons (Company Limited/Public Company Limited)

- Documents related to juristic persons such as Certificate of the Company Registration verifying names of directors, managing partners and authorized directors (dated not more than one month previously)
- Identity documents and House Registration of authorized person(s) such as Citizen ID card or any other ID cards
- Certificate of Shareholder Registration (Bor Or Jor 3), certifying the company seal or any amended registration details (Bor Or Jor 4)
- Letter of Authority from authorized person(s) on behalf of the juristic person (if other person is an authorized representative to withdraw funds)
- Identity documents and House Registration of authorized representative to withdraw funds such as Citizen ID card or any other ID cards
- Minutes of the Board Meeting authorizing the opening of the account and designating the signatories for payments with a company seal (if any)

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

Yes, The Bank of Thailand (BOT) has established regulations for financial institutions to act accordingly with Know Your Customer (KYC) policy in which financial institutions must be able to (1) identify your customers and (2) verify your customers before opening a bank account which require information relating to the organization in order to open a legal entity account for Thai major owned and foreign major owned. (details about requested documents are in part 2)

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

The Bank of Thailand (BOT) has established regulations for financial institutions to act accordingly with Know Your Customer (KYC) rules in which financial institutions must be able to (1) identify your customers and (2) verify your customers before opening a bank account. The Bank of Thailand (BOT) has established regulations for financial institutions to act accordingly with Know Your Customer (KYC) rules in which financial institutions must be able to (1) identify your customers and (2) verify your customers before opening a bank account.

Moreover, As per AMLO regulations, obliged parties including banks shall complete the required procedures for identification of their customers. Moreover, the provided information must be validated during the application process. However, if transactions reach certain criteria (detail in part 1.3) financial institutions must report suspicious transactions to AMLO according to Anti-Money Laundering Act, B.E. 2542 (1999).

5.2 What documents are needed in order to open an individual bank account?

In addition to the basic bank requirements in Thailand, the following are mandatory:

- Copy of ID card (only front of the card)
- Copy of resident registration (only if the ID card does not show the address)
- Copy of passport (In case of foreigners)

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

A bank may refuse to open an individual account if the applicant is unable to provide requisite documents as existing legislation.

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?

The minimum requirement is to provide the required documents to the financial institution; being unable to provide requisite documents may result in refusal of an individual bank account according to KYC policy from Bank of Thailand (BOT).

An applicant may object to a refusal decision to the relevant bank.

6. Digital-/Cryptocurrency**6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.**

Yes, the accounts for crypto currency are allowed for both companies and individuals to acquire such an account.

The basic requirements for obtaining a crypto currency account are as follows:

- Verified Account (Mobile Phone and Email Verification code)
- ID card (require both front and back of the card)
- Facial Verification
- Identity Verification (Personal details / address)

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

The SEC has the authority to issue regulations. Prescribing different rules for issuing and offering for sale Digital tokens and digital asset business.

Only a legal entity in the form of a limited company or a public limited company can issue an ICO. Initial Coin Offering (ICO) issuers must be licensed by the SEC and must submit a digital token offering statement and draft prospectus with the SEC.

The ICO issuer must provide a report on the operating results and financial position, including disclosing information that may affect the benefits of digital token holders or for investment decisions or to changes in the price or value of digital tokens with the SEC and the public.

7. Opening an account without proof of Residency

7.1 Can an account be opened without proof of Residency?

No, for Native Thai citizens the proof of residency must be submitted in order to open an account as part of the minimum KYC requirement. Moreover, according to the basic bank requirement in Thailand there must be proof of residency by ID card or resident registration. Fail to provide such information a bank may refuse to open an individual account.

However, foreigners have to provide a passport and work permit instead of proof of residency.

7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.

N/A

8. Recent developments in retail banking

8.1 What recent developments in retail banking have taken place?

Retail Bank in Thailand means a public limited company licensed to undertake commercial banking business. Its main objective is to provide basic financial services such as deposits, transferring, and receiving payments to individuals and SMEs. It is not allowed to operate complex and high-risk businesses such as foreign currency and derivatives.

Retail banks in Thailand are such as:

- TCR Bank (Thai Credit Retail Bank)
- Bank for Agriculture and Agricultural Cooperatives
- Government Savings Bank
- Government Housing Bank

Nowadays, many retail banks strive to introduce new services to individuals, which goal is to maintain customer loyalty and customer bases. There are several services such as retirement planning, wealth management services, and personal banking.

8.2 What retail banking services are offered to customers?

Retail banking services available in Thailand such as:

- Deposits account (Tax Free Account),
- Loan (Unsecured loans / Micro SME business loan / Loan with gold as collateral / personal revolving credit),
- Thai Credit Prompt Pay service,
- Money transfer service,
- Payment,
- Wealth management services,
- Retirement planning, etc.

9. Recent developments in Anti-Money Laundering (AML) and online banking

9.1 What recent developments in AML and online banking have taken place?

In terms of AML the regulations are the same as cash transactions (detail in part 1.3).

According to international standard guidelines and has been preliminarily approved from the International Monetary Fund (IMF) and the World Bank as a guideline for each bank to use as a framework in further policy making.

Financial institutions in Thailand realize the importance and impact that will occur covering environmental operations Social and Governance (ESG) including the impact on the Bank's reputation if it is involved or involved in money laundering and financial support for terrorism in order to prevent the bank as a tool of money laundering and terrorist financing in the legitimate use of the proceeds from various crimes. Therefore, anti-money laundering and financial support policies have been established to terrorism (AML/CFT Policy) in accordance with international practice, rules or official policies, consisting of 6 parts together, as well as establishing procedures for knowing customers / checking for false information True about customers (Know Your Customer /Customer Due Diligence: KYC/CDD) in accordance with international standards.

Company name: Multiplus Audit and Consulting.Co.,Ltd
Country: Thailand
Office IP address:
Office address: 82 Multiplus Building, Ramkhamhaeng Road, Minburi Sub-district, Minburi District, Bangkok 10510
Tel: +66 2510 0183 / +66 83 199 3556
Fax: +66 2540 0181
URL: www.multiplusaudit.com
Author: Surapon Thawanyavitchajit
e-mail: surapon@multiplus.co.th

Company & Author details

Multiplus Audit and Consulting Co., Ltd was founded in 2007, with the highly capable and calibre staff members. The services are statutory audit, internal audit, business, and operational risk assessment, Tax and Advisory, IT Audit, ERP Implementation, and company incorporation. Our other companies in the group provide bookkeeping, tax filing, salary and payroll service, IT network set up and programming.

Clients range from small and medium enterprise companies to public listed companies and foreign multinationals. The firm is now have experienced profession leader and more than 25 staffs.

The firm is headquartered in Bangkok and considering to has a branch office in Chon Buri, the Eastern Economic Corridor (EEC) which is supported by the Thai government. The team is diverse, internationally trained with a modern outlook and proactive approach. Under the quality control practice, the firm has announced the quality control policies with operation procedures with the firm's slogan "Excellence is our promise".

With the provided share working space and facilities in the firm including near Suvarnabhumi International Airport, the foreign visitors and clients can easily come to visit and arrange the meeting. There are a lot of accommodations such as hotels or apartments. It helps to start doing business in Thailand easily at a reasonable cost.

With the strong support locally from our alliances, international business starts in Thailand can shortly achieve the business goals by using our successful model. For example, with our allied international law firm in Thailand, the agreement drafting, and other Thai government applications of approval or certificates can be served. The plan for foreign company set-up in Thailand will be planned and executed together with tax planning, suitable accounting system implementation with cloud computing software. The business matching with a local business is made as a timely basis.

To get more feasible and practical perspective, the firm is the member of The Federation of Thai Industries which arranges the full support for Foreign Direct Investment (FDI) and improves local manufactures and business owners to understand the international business practices. The firm's roles are joining the international business matching activities, Business and Tax Clinic, Entrepreneur Guide for Sustainability Business, etc

Author: Surapon Thawanyavitchajit



Address: /2 Multiplus Building, Ramkhamhaeng Road, Minburi Sub-District, Minburi District, Bangkok, 10510

Tel: +66 2540 0183 / +66 8319 93556

e-mail: surapon@multiplus.co.th

Company URL: www.multiplusaudit.com

Mr. Surapon Thawanyavichajit, CPA, MBA, CPIAT, is the Partner and owner of Multiplus Audit and Consulting Co., Ltd, a tax, professional audit and consulting firm in Bangkok, Thailand. He is an experienced auditor with extensive expertise in various areas and types of services including financial audit, internal audit, mergers and acquisitions due diligence, joint ventures, cross-border transactions, corporate restructuring, banking and finance, project finance, debt restructurings. He gains wide business experiences such as energy, oil, and gas, mining, wind energy, manufacturing, logistics, retails, e-commerce, insurance, trading, hotel, and hospital, etc.

Mr. Surapon provides audit, tax, and financial advice to public and private clients spanning multiple industries by strengthening corporate responsibility, building public trust, and making a positive impact in their communities.

1. Legal overview - Turkey

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

The main laws and regulations that regulate Turkish banking system are as follows:

- the Banking Law No. 5411;
- the Law No. 5472 Amending the Banking Law
- the Law No. 1211 on the Central Bank of the Turkish Republic;
- the Law No. 6327 on the Individual Pension System;
- the Capital Markets Law No. 6362;
- the Turkish Commercial Code No. 6102;
- the Turkish Code of Obligations No. 6098;
- the Mortgage Law No. 5582;
- the Bank Cards and Credit Cards Law No. 5464;
- the Financial Leasing Law No. 3226;
- the Law on the Protection of the Value of the Turkish Currency No. 1567;
- the Law on the Payments, Securities Settlement Systems, Payment Systems and Electronical Money Institutions No. 6493
- secondary regulations of the abovementioned laws and other applicable laws and regulations;
- the Turkish Banking Regulation and Supervision Agency Decisions.

The Turkish Banking Regulation and Supervision Agency is a public legal entity established for regulation and supervision of activities of all banks, financial holding companies, leasing companies, factoring companies and financing companies.

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

Turkey attaches great importance to prevention of money laundering. MASAK is the primary institution established by the Repealed AML Law to control and combat financial crimes in Turkey. MASAK started to carry out its activities under the Revealed AML Law in February 1997.

MASAK is currently organized and operates under the Ministry of Finance and Treasury and its primary duty is to prevent money laundering crime. In this vein, it is authorized to develop anti-money laundering policies and measures, conduct research on obliged sectors, investigate and examine institutions and transactions and impose sanctions in case of violation.

Turkey has not only executed international conventions but has also implemented an extensive list of laws and regulations that govern anti-money laundering principles in Turkey.

International conventions on money laundering that Turkey is a party to are as follows:

- 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- Convention of Council of Europe on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime dated November 8th, 1990 (known as the Strasbourg Convention or CETS 141)
- 1990 United Nations Convention against Transnational Organized Crime (known as the Palermo Convention)

The primary legislation that governs anti-money laundering principles in Turkey are as follows:

- The Law No. 4208 on Prevention of Money Laundering (Abolished) ("**Repealed AML Law**")
- The Law No. 5549 on Prevention of Laundering Proceeds of Crime ("**AML Law**")

- The Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism ("**Measures Regulation**")
- The Regulation on Compliance Programs Regarding Obligations on Laundering the Proceeds of Crime and Prevention of Financing of Terrorism ("**Compliance Regulation**")
- Financial Crimes Investigation Board ("**MASAK**") General Communiques

The AML Law governs the following obligations:

- Customer identification,
- Suspicious transaction reporting,
- Notification of large transactions to MASAK,
- Assignment of a compliance officer, and
- Training and internal auditing.

Under the main measures set out in the Measures Regulation, the parties that are subject to the anti-money laundering laws and regulations are obliged to conduct due diligence for their customers, report the suspicious transactions they encounter related to money laundering and financing of terrorism to MASAK, keep the relevant information and documents about their customers, and submit them when they are requested by the competent authorities.

Moreover, Article 282 of the Turkish Penal Code No. 5237 titled "Laundering of Assets Acquired from an Offense" regulates imprisonment from two up to seven years and judicial fines for money laundering offense subject to certain circumstances.

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

As per the AML Law, the following parties and their branches, agencies, representatives, and similar affiliated units are subject to anti-money laundering laws and regulations:

- Banks
- Other financial institutions authorized to issue deposit cards or credit cards
- Foreign exchange bureaus
- Financing and factoring companies
- Capital Markets Brokerage Houses and portfolio management companies
- Payment service providers and electronic money institutions
- Investment partnerships
-
- Insurance, reinsurance, and pension companies, and insurance and reinsurance brokers
- Financial leasing companies
- Providers of settlement and custody services under the capital markets legislation
- Borsa Istanbul A.S. pertaining only to its custody services relating to Precious Metals and Precious Stones Market
- PTT Corporate (Postal and Telegraph Organization) and cargo companies
- Asset management companies
- Dealers of precious metals, stones, and jewellery
- Directorate General of Turkish Mint pertaining only to its activities of minting gold coins
- Precious metals intermediaries
- Buyers and sellers of real estate for trading purposes and brokers/intermediaries
- Dealers of the sea, air, and land vehicles, including construction machines
- Dealers and auctioneers of historical artifacts, antiques, and works of art
- Lottery and betting operators including the Turkish National Lottery Administration, Turkish Jockey Club, and Football Pools Organization Directorate
- Sports Clubs

- Public notaries
- Lawyers in private practice (not in-houses)
- Certified general accountants, certified public accountants, and sworn-in certified public accountants in private practice
- Independent auditors licensed to audit under the Capital Markets Law

One of the most important elements of anti-money laundering measures is suspicious transaction reports. Where there is any suspicion regarding the assets in the relevant transaction that they have been gained in illegal ways or used for illegal purposes, such transaction is deemed as a suspicious transaction. Additionally, transactions, where the parties cannot identify the customers or obtain adequate information regarding the purpose of the business relationship can also be considered suspicious transactions. The obliged parties shall report all kinds of suspicious transactions, regardless of their amount, to MASAK according to the anti-money laundering legislation. The obliged parties may submit the relevant suspicious transactions to MASAK physically or via the online system of MASAK by way of filling out the STR form (*Şüpheli İşlem Bildirim Formu*) ("ŞİB") issued by MASAK.

1.4 Is an application for a business account with a bank located in your country necessary?

As a general principle, businesses are required to use banks located in Turkey for processing their payments pursuant to Tax Procedure General Communiqué numbered 459. For companies, it is required to have a business account. As a matter of fact, the incorporation process of joint stock companies (the most popular trading company type in Turkey) requires opening of a temporary bank account even before the company incorporation process is completed. Sole traders, on the other hand, are not required to have business accounts. They may conduct their business-related financial affairs through their personal accounts.

1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?)

Yes, the banks are obliged to scrutinise applications thoroughly to comply with the banking laws and regulations. The banks are subject to supervision of the Banking Regulation and Supervision Agency of Turkey. Although there is not an exhaustive list of principles that the banks shall follow in the event of an application for opening a bank account, each bank conducts a due diligence for each application to avoid any breach of banking legislation and internal policies of each bank.

1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account?

Registration to the Chamber of Commerce is not required for opening a bank account by a corporate non-resident.

1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application?

There is not a certain list of legal requirements that needs to be fulfilled for opening a bank account and it is not required to be registered before a governmental agency prior to an application. However, each bank may conduct its own due diligence in each application in line with the banking legislation and internal principles of each bank.

1.8 Is cybersecurity and data privacy formally regulated?

There is no cybersecurity legislation adopted in Turkey. However, the Law No. 5809 on Electronic Communications (the "Law No. 5809") governs duties allocated to the Ministry of Transport and Infrastructure and to the Information and Communication Technologies Authority (the "ICTA") for

providing cybersecurity measures in electronic communications sector. Moreover, the Law No. 5809 also regulates certain duties allocated to the Board of Cyber Security for the purposes of providing cybersecurity subject to the Cabinet Decree on Execution, Management and Coordination of National Cyber Security Works. Responsibilities of the Ministry of Transport and Infrastructure include determining policies, strategies and objectives as well as regulating principles and procedures for providing cybersecurity to public institutions, organizations, real persons and legal entities. ICTA is also responsible for fulfilling its responsibilities and duties subject to the liable Law No. 5809. It is also important to note that ICTA has the authority to impose administrative fines to electronic communication service providers in circumstances related to the implementation of the Law No. 5809 and breach of cybersecurity.

Moreover, National Cyber Security Intervention Centre (the “USOM”) was established on 2014 for interventions on national cybersecurity subject to the National Cyber Security Strategy and Action Plan of 2013-2014 which was updated by the National Cyber Security Strategy, and Action Plan of 2016-2019 thereafter. Cybersecurity Incident Response Teams are established within USOM that are responsible for taking required measures against cyber-attacks, to provide precautionary mechanisms as to the intervention of such incidents and ensuring information security in public institutions and private entities operating in critical sectors which are health, electronic communications, energy, banking and finance, transportation, critical public services.

On the other hand, protection of personal data is mainly regulated by Article 20/3 of the Turkish Constitution and the Personal Data Protection Law (the “DPL”). Turkish Constitution mainly regulates that each person has the right to request protection of their personal data. The Turkish Data Protection Authority is the regulatory authority that enforces the DPL. The DPL regulates general principles of data processing and imposes several obligations on data controllers and data processors for their data processing activities for the purposes of ensuring protection of personal data. The DPL is applicable to natural persons (data subjects), whose personal data are processed, and natural or legal persons (data controllers or processors), who process such personal data wholly or partly by automatic means or non-automatic means. The DPL applies to all data processing activities regardless to the type of sector of the data controller.

It is also worth mentioning that Turkish legislation attaches great importance to deterring breach of cybersecurity and data protection rules and includes certain sanctions within the Turkish Criminal Code No. 5237 that are applicable when breach of cybersecurity and data protection rules. According to the Turkish Criminal Code No. 5237 the following cyber activities are criminalised and are subject to certain sanctions ranging from one to three years’ imprisonment: providing unlawful or unauthorised access to information systems, blocking or destroying information systems and altering or destroying data; improper use of bank or credit cards; creating or putting together devices, software, passwords or other security codes to commit the above-mentioned crimes; and producing, importing, delivering, transporting, storing, accepting, selling, supplying, purchasing or carrying the same.

The DPL also sets forth several criminal sanctions in the event of a breach of data protection legislation. Persons who illegally collect personal data may be sanctioned with one to three years’ imprisonment. If the data is sensitive personal data, the offender may be subject to one-and-a-half to four-and-a-half years’ imprisonment. Persons who illegally transfer personal data or make personal data available to the public may be subject to two to four years’ imprisonment. Finally, persons who are responsible for deleting data following the expiry of the retention period but fail to do so may also be subject to one to two years’ imprisonment.

2. Formal requirements

2.1 What formal requirements need to be met in order to open a bank account?

An application to the bank that the applicant wishes to open an account with shall be made. Although each bank may request different documents subject to their internal principles and rules, generally banks require an ID Card/Passport, address and contact details of a natural person and trade registry gazette records, tax registration certificate, certificate of activity, signature circulars and personal information of representatives of a legal person. It is important to note that the banks may request further information in each application considering the circumstances of each applicant.

2.2 What strict legislation and individual acceptance policy needs to be taken into account?

All banks shall follow banking legislation, anti-money laundering principles and regulations and decisions of the Banking Regulation and Supervision Agency of Turkey while performing their activities. There are also guidelines published by the Banks Association of Turkey that shall be followed by banks in analysing the applications of potential customers.

2.3 Do the banks have to look very carefully at each application before they can make a decision?

All banks in Turkey conduct a detailed due diligence for each application subject to its circumstances as per the banking legislation and guidelines published by the Banks Association of Turkey. Furthermore, Turkish Law requires banks to act in accordance with a higher standard of care in comparison with other merchants. In this vein the Guideline for the Turkish Banking System on Significance of Fight Against Laundering of Crime Revenues and Financing of Terrorism published by the Banks Association of Turkey (the "Guideline") provides a list of real and legal persons and transactions requiring enhanced diligence during acceptance and transactions as customer as follows:

- Correspondent Banking
- Resident or Associated Customer Transactions in Risky Geographical Territories: The guideline provides that each bank may make its own definitions of national and international risky territories and areas in the below provided categories, and monitor its customers in such risky territories and areas through heavier recognition-approval and monitoring principles:
 - O FATF/Non-cooperative Countries and Territories (NCCTs)
 - O Gray Zones
 - O Offshore Centres, Free Zones and Financial Centres
 - O Politically Exposed Persons (PEPs)
- Sensitive Business Sectors in Money Laundering: It is recommended that enhanced diligence is placed on opening an account for the below given industries and profession groups, and their customer identity and descriptive documents as well as their industry information are recorded carefully and completely, and their customer accounts are monitored carefully:
 - O Authorized enterprises (Exchange Offices)
 - O Jewellery, traders of precious stones and metals such as gold and diamond,
 - O Persons residing abroad (especially in the risky geographical territories and regions),
 - O Travel agencies, passenger and cargo transporters,
 - O Casinos,

- O Dealers of luxury vehicles,
- O Dealers of antiques, art galleries, carpet traders,
- O Major real estate brokers and all kinds of agents, representatives and commercial agents thereof,
- O Leasers of air and sea crafts and vehicles,
- O Producers and traders of finished leather goods,
- O Producers and traders of auto spare parts,
- O Cash based business (car park operators, restaurants, fuel oil, lottery and newspaper dealers, distribution companies, dealers of toys and stationery), and
- O Factoring companies.

- Risky Banking Products

- O Cash Transactions

- O Electronic Transfers

- O Accepting the Personal Checks Drawn on Foreign Banks for Collection,

- O Internet, Call Centre and ATM Transactions

- Foundations and Societies (Charity Organizations Based on Donations and Grants)

According to the eighth special recommendation of FATF, the countries should reconsider the adequacy of their laws and regulations about the assets which can be abused for the purpose of financing of terrorism. Non-profit organizations are particularly exposed to such abuse; therefore, the countries should take the required measures to prevent the abuse of charity organizations:

- by terrorist organizations under the guise of legal entities;
- for the sole interests of terrorist organizations in order to provide financing of terrorism including the evasion of the measures of freezing of assets; and
- through concealing or screening the covert channelling of legal funds to terrorist organizations.

2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)

There is not a certain list of information that banks require from their clients. Therefore, such request by banks may differ in each application. However, according to the Guideline all banks shall follow "Know-Your-Customer Principle" for ensuring transparency in customer transactions and data and establishment and maintenance of a customer-bank relationship based on mutual trust. Therefore, in this vein banks may need detailed information in customer identification processes. It is also worth mentioning that the AML Law imposes a duty on the obliges parties for following the required procedures for knowing their customers and for identification of their customers.

2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?

As per the AML Law, obliged parties including banks shall complete the required procedures for identification of their customers. The Guideline also establishes the know-your-customer and customer due diligence principles. In this vein, it is crucial to obtain the following information:

- Determination of the customer's real identity and address,
- Coherency of the customer's documents and information,
- The reason of the customer's preference of the bank and the purpose of opening an account,
- Profession, main revenue-raising activities, and professional principles of the customer,
- Profile and capacity of the customer's transactions,
- Suppliers and buyers of the customer, and
- Location of customer business office and activity.

In this vein customer-acceptance procedures are classified as follows:

- Identity determination procedure and recording of stated addresses for permanent customers,
- Identity determination procedure and recording of stated addresses for temporary customers,
- Determination of the additional legal and other information and documents to be used in bank's internal transactions other than the basic determination of the customer's identity (tax, identity and citizenship numbers, power of attorney, contract, contact information such as telephone number, electronic mail address, and profession), and
- Verification of the documents and information regarding the customer and other information and documents used during opening of the account.

2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?

Yes, they are prohibited. The Guideline sets forth the real and legal persons that cannot be accepted as customers as follows:

- Persons whose Real Identity and Address cannot be Determined and Identified;
- Persons and Organizations Included in the Watchlists for Crime Revenue Laundering and Terrorism Published by Official Authorities; and
- Shell Banks.

2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?

Not exactly, unless the bank requires such information as per its policies or as required due to any suspicious situation. Information regarding shareholders and directors of the company can be obtained from trade registry gazette records of the companies which may be accessed by public through database of Trade Registry Offices. However, for joint stock companies, share transfers will not be announced in the trade registry gazette unless such share transfer results in company being owned by a sole shareholder. Furthermore, companies with foreign capital are required to make annual declarations through a system called E-TUYS. Such system includes the shareholding structure of companies with foreign capital and, any changes to that structure shall be declared by the said system.

2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?

According to Turkish law, banks are categorized as either deposit banks or development and investment banks. Deposit banks comprise of:

- state-owned banks,
- privately owned banks,
- banks under the Savings Deposit Insurance Fund, and
- foreign banks.

2.9 Are there banking institutions which are not available for certain type of customer (e.g., not for businesses / not for individuals)?

All types of banks are available for both legal and natural persons.

3. Process and way of working

3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD)?

Yes. Answered in Part 2.

3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?

Answered in Part 2.

3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.

Yes, cash transactions are allowed in Turkey. Although cash transactions are allowed in Turkey, each bank may conduct a detailed inspection according to the amount of the relevant cash transaction considering such transactions are deemed as transactions requiring enhanced diligence as per the Guideline. As a result of this inspection, if such cash transaction is deemed as a suspicious transaction as per the Guideline, the bank may refuse the client or the transaction that the client is willing to make accordingly.

3.4 Do the banks require proof of compliance with national and international laws and regulations?

Compliance with national and international laws and regulations is required by all banks in Turkey, however there is not a procedural requirement for submission of a proof of compliance with national and international laws and regulations.

3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?

Banks shall report the suspicious transactions they encounter related to money laundering and financing of terrorism to MASAK as per the Measures Regulation within the scope of prevention of money laundering.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

Large currency transactions may also be considered within suspicious transactions and if such transaction is deemed suspicious, then the relevant bank shall report such transaction to MASAK as per the Measures Regulation.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g., objection procedure / legal procedure)?

As per the AML Law and Measures Regulation Banks may follow and investigate transactions of their customers. In this vein, Banks may close accounts of their customers in the event of breach of laws and regulations and/or suspicious transactions. Likewise, it is customary to see, in the banking services agreements of the banks, that the banks' reserve a contractual right to suspend/terminate their services when, amongst other things, the bank notices illicit activities. Although there is not a requirement for the Banks to notify their clients, in practise banks inform their clients if their account is closed by the Bank due to non-compliance with the laws and regulations and/or suspicious transactions and request them to withdraw their remaining balance in their account.

When the liquidation procedure is started as to a bank account, the account holder may submit an objection to the bank. However, it is not likely that the bank will accept such objection unless the bank has made a material error in starting the liquidation procedure. Alternatively, the objection may be submitted to the Banking Regulation and Supervision Agency. The Authority will get the relevant bank's opinion on the matter and make a decision accordingly. It is also possible to file a lawsuit against the bank under the banking services agreement executed with the bank.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

Banks generally require trade registry gazette records, tax registration certificate, certificate of activity, signature circulars, personal information of representatives of a legal person for opening a bank account by legal persons.

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

No, there is not a specific obligation imposed on the banks to verify the organizational structure of a legal entity. However, in practise, in line with the banking legislation and the Guideline, banks may require further corporate information and documents from the applicants.

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

There is no special requirement for opening bank accounts for people over 18 years old who are not under legal restriction. The foreigners, however, should have a Turkish tax ID number to be able to open a bank account.

5.2 What documents are needed in order to open an individual bank account?

Banks generally require ID Card/Passport, address and contact details of a natural person in the event of application for opening a bank account.

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

A bank may refuse to open an individual account if the applicant is deemed as a risky customer in terms of the banking legislation
<p>5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?</p> <p>An applicant may object to a refusal decision to the relevant bank. It is also possible to file a complaint to the Banking Regulation and Supervision Agency</p>
6. Digital-/Cryptocurrency
<p>6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.</p> <p>Cryptocurrency platforms are not regulated in Turkey. Banks are expressly prohibited to open cryptocurrency accounts. The Central Bank of Republic of Turkey's (the "CBRT") issued the Regulation on Not Using Crypto Assets for Payments (the "Regulation"), which was published in the Official Gazette No. 31456 dated April 16, 202. Until this Regulation, there was no regulation governing crypto assets in Turkey. The Regulation defines crypto assets as "intangible assets that are created virtually using distributed ledger technology or a similar technology and distributed over digital networks, but are not qualified as fiat currency, fiduciary money, electronic money, payment instrument, securities or other capital market instruments". Additionally, the Regulation introduced the following prohibitions for the use of crypto assets in Turkey:</p> <ul style="list-style-type: none"> • Crypto assets cannot be used directly or indirectly for payments. • No service can be provided for direct or indirect use of crypto assets in payments. • Payment service providers cannot develop business models in a way that crypto assets are directly or indirectly used for provision of payment services and electronic money issuance, nor can they provide any services related to such business models. • Payment and electronic money institutions cannot act as an intermediary for fund transfers from or to platforms that offer trading, custody, transfer or issuance services for crypto assets. <p>In line with this Regulation, banks in Turkey cannot open accounts for crypto assets.</p>
<p>6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?</p> <p>N/A</p>
7. Opening an account without proof of Residency
<p>7.1 Can an account be opened without proof of Residency?</p> <p>No, a proof of residency must be submitted to Banks in Turkey for opening a bank account.</p>
<p>7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.</p> <p>N/A</p>
8. Recent developments in retail banking

8.1 What recent developments in retail banking have taken place?

Recently, online banking systems are developed in Turkey. Customers may conclude most of their banking transactions through online banking systems. For most of the transactions requiring presence of the customer, video-call options are available on mobile apps.

8.2 What retail banking services are offered to customers?

Retail banking services in Turkey include a broad range of services such as credit card services, assistance for all kinds of banking transactions, fund transfers, investment advisory services etc.

9. Recent developments in Anti-Money Laundering (AML) and online banking**9.1 What recent developments in AML and online banking have taken place?**

There have been recent amendments to the AML legislation within the first 6-months of 2021. With these amendments the scope of obliged persons, institutions, and organizations have been expanded and crypto asset service providers, saving finance companies, and self-employed attorneys - only for a limited number of activities - have been mentioned within the list of the obliged parties as per the AML Law. In this vein, important obligations including but not limited to the obligations of customer identification and suspicious transaction reporting have become applicable for the listed obliged parties.

Regarding developments in online banking practices, it can be said that the COVID-19 pandemic has accelerated the developments in online banking systems in the last 2 years and has encouraged banks to take steps to avoid crowds in bank branches and therefore enabling most of the banking transactions to be made online by the customers.

Company & Author details

Omer Kesikli



is a managing partner at Kesikli Law Firm and a licensed lawyer admitted to Istanbul Bar Association, licensed to practice law in each and every city of Turkey. He has been recognized as a leading individual and recommended lawyer in Turkey by the Legal500 EMEA for the last seven (7) years in a row. Throughout his professional career, he has advised a number of local and foreign corporations, handled a broad range of corporate, commercial and regulatory matters internationally and locally, and acted as a lawyer for reputable corporate and private clients in litigation and arbitration proceedings. His experiences included structuring complex business transactions, advising on consortiums and joint ventures; drafting and negotiation of share purchase agreements, shareholders agreements, guarantee arrangements, strategic alliances, project development agreements not only in Turkey but also in several other jurisdictions in the Middle East, Africa and Europe. He regularly acts for companies in their corporate transactions, energy and construction projects, privatization and public tenders, real estate transactions, project finance arrangements, IP matters and dispute resolution proceedings.

KESIKLI HUKUK BUROSU / KESIKLI LAW FIRM
Bagdat Caddesi, No.399/B
K.4, Ark399 Suadiye Mah
Kadikoy Istanbul
Turkey

Tel.: +902162482924
e-mail: omer@kesikli.com
URL: www.kesikli.com

Sena Ilica is a lawyer at Kesikli Law Firm. She focuses on Corporate and Commercial Law, Energy and Construction Projects, Intellectual Property, Employment Law and Dispute Resolution matters. She regularly advises corporate and private clients on complex legal transactions and represents them in litigation proceedings before the Courts of Turkey. She is registered to Istanbul Bar Association and licensed to practice in each and every city of Turkey.

KESIKLI HUKUK BUROSU / KESIKLI LAW FIRM
Bagdat Caddesi, No.399/B
K.4, Ark399 Suadiye Mah
Kadikoy Istanbul
Turkey

Tel.: +902162482924
e-mail: sgungordu@kesikli.com
URL: www.kesikli.com

1. Legal overview - USA

1.1 What laws and regulations are to be complied with (e.g., Anti-Money Laundering / Anti-Terrorist Financing / Financial Supervision)?

Anti-Money Laundering Regulations (“AML”) as enforced by the Financial Industry Regulatory Authority (“FINRA”); US Anti-Terrorism Act under 18 USC §2333(a) (“ATA”) as enforced by the Office of the Comptroller of the Currency (“OCC”) and the Financial Crimes Enforcement Network (“FinCEN”) as enforced by the US Department of the Treasury; 12 CFR 201 et seq., Financial Supervision of Federal (and State) banks and financial institutions as enforced by the Board of Governors of the Federal Reserve System; The Bank Secrecy Act of 1970 (“BSA”) (aka – “Currency and Foreign Transactions Reporting Act”) as enforced and governed by the US Congress under Title 12, US Code, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (“US Patriot Act”) as enforced and governed by the US Congress under Title 18, US Code; Office of Foreign Assets Control (“OFAC”) as enforced by the US Department of the Treasury.;

1.2 What are (legal or administrative) authorities for imposing anti-money laundering requirements in your country? Please provide details of the anti-money laundering requirements.

Money Laundering Control Act 1986
Money Laundering Suppression Act 1994
Money Laundering and Financial Crimes Strategy Act 1998
Suppression of the Financing of Terrorism Convention Implementation Act 2002
Intelligence Reform and Terrorism Prevention Act 2004

All the above are enforced under the Bank Secrecy Act of 1970 (“BSA”) which imposes a range of compliance obligations, including:

- Requirements to implement a risk-based AML program with appropriate customer due diligence (CDD) and screening measures (Know your Customer (“KYC”) provisions);
- Perform a range of reporting and record-keeping tasks when dealing with suspicious transactions and customers;
- All institutions to appoint Chief Compliance Officer to oversee their firm’s AML program and be responsible for arranging audits; including the use of automated tools and technology to enhance BSA=AML and KYC compliance;
- Adherence to international based standards (“FATF 40 Recommendations”)

1.3 What financial institutions (and other businesses) are subject to anti-money laundering requirements? Are there cross-border reporting requirements?

The term “financial institutions” has a very broad meaning in the U.S. It includes, among others, banks, credit unions, broker-dealers, card issuers, trust companies, mortgage lenders, money service businesses like non-bank lenders, money transmitters and currency exchanges, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands. The focus of this guide is on banks and credit unions.

NOTE: There are two levels of banking in the U.S.: 1) FEDERAL BANKS, 2) STATE BANKS.

Each of the 50 US states maintain their own regulatory institutions that govern the operations of state-chartered banks and State Savings and Loan institutions. It is well beyond the scope of this publication to cover the banking regulatory framework of each of the 50 US states.

What has been shown herein are regulations based at the Federal level which govern Federal-chartered banks, National banks and Federal Credit Unions.
1.4 Is an application for a business account with a bank located in your country necessary? FEDERAL BANKS – Yes; STATE BANKS - Yes
1.5 Are the banks obliged to scrutinise applications thoroughly? (For example: do the banks need to know where one obtained the investment capital / who the actual stakeholders in the company are etc.?) Under Federal and State US anti-money laundering and KYC provisions, yes
1.6 Is a registration with the Chamber of Commerce (or similar registrar) necessary for a corporate non-resident in order to be eligible for a bank account? NOTE: Chambers of Commerce in the US and in each State are voluntary member organizations only, having no governmental regulatory or enforcement activities or mandates. Such registration with a Chamber of Commerce in the US or with a State is neither mandated nor relevant within the US.
1.7 What other legal requirements need to be met in order to be eligible for a bank account? Is it necessary to register with a governmental agency prior to an application? BASIC REQUIREMENTS: Government-issued ID, including a passport or other photo ID; Social Security number (if for a US citizen or resident); Proof of your physical address, such as a utility bill; Any immigration forms (for non-US citizens) OTHER REQUIREMENTS: See Section 2.1
1.8 Is cybersecurity and data privacy formally regulated? Cybersecurity and data privacy are handled differently in the U.S. compared to most countries. It is a complex topic. Each state has laws indicating how cybersecurity and privacy is to be handled for its residents. The protections in some states, like California, are more in line with European-style cybersecurity and data privacy protections. In certain cases, such as with financial information, there are specific federal laws that apply. The federal laws that regulate the manner in which banks handle non-public financial information are the Bank Secrecy Act, Right to Financial Privacy Act, Gramm-Leach-Bliley Act and Fair Credit Reporting Act. Their focus is on preventing identity theft and financial fraud. Foreign privacy laws like the General Data Protection Regulation (GDPR) do impact U.S. banks and non-depository financial institutions, such as money transmitters, broker-dealers, investment advisers, funds, credit reporting agencies, and other entities that receive information about residents of the countries to which such laws apply.
2. Formal requirements
2.1 What formal requirements need to be met in order to open a bank account? <ul style="list-style-type: none"> • Government-issued identification. Almost every bank requires you to present a valid government-issued photo ID when opening a banking account. ... • Social Security card or individual taxpayer identification number (or <u>if not a US person</u>, a cedula, a voting card, government issues citizen's card, military ID, • Proof of residence usually through a recent utility bill not older than 60 old (water, gas, electric, etc.)(CELL OR MOBILE PHONE BILLS ARE NOT ACCEPTED);

<ul style="list-style-type: none"> • Letter of recommendation from existing banker or financial institution attesting to certification of an existing banking relationship; • Letter of recommendation from a professional person (Lawyer, Accountant, etc) attesting to character of the applicant; • Other documents as requested by the banking institution.
<p>2.2 What strict legislation and individual acceptance policy needs to be taken into account?</p> <p>There is no mandated governmental or legislative banking acceptance policy in the US. Each financial institution is free to establish its own customer acceptance policy as governed under BSA-AML-KYC regulations.</p>
<p>2.3 Do the banks have to look very carefully at each application before they can make a decision?</p> <p>Based on existing BSA-AML-KYC regulations in the US, yes.</p>
<p>2.4 Are banks required to obtain organizational structure of their (potential) clients? What further information is to be provided (e.g., the reason for having locations in different jurisdictions / the reason for using a certain type of (foreign) legal entity / is the organizational structure based on an underlying (fiscal) advisory report / is a Trustee/Trust office appointed and why etc.)</p> <p>Bank examiners and underwriters in the US are free to request additional documentation or proof of business structures and/or other evidence pursuant to the existing BSA-AML-KYC regulations.</p>
<p>2.5 Describe the customer identification and due diligence requirements. Are there any special / enhanced due diligence requirements for certain types of customers?</p> <p>PLEASE SEE PARAGRAPH 2. ABOVE.</p>
<p>2.6 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to prohibition?</p> <p>Certain Federal banks do accept accounts from foreign banks for correspondence and/or transactional purposes but the due diligence conducted in the US will be extremely strict with close adherence to the BSA-AML-KYC regulations.</p>
<p>2.7 Is accurate, current and adequate information about the (ultimate) beneficial ownership and control of legal entities maintained and available to government authorities?</p> <p>Pursuant to current BSA-AML-KYC regulations, yes.</p>
<p>2.8 What type of banking institutions are there in your country (e.g., commercial banks / savings banks / credit unions / mortgage banks)?</p> <p>Please recall that in addition to the above-mentioned types of institutions, such institutions exist at both the Federal level as well as at the State level in the US.</p>
<p>2.9 Are there banking institutions which are not available for certain type of customer (e.g. not for businesses / not for individuals)?</p> <p>Not in the US.</p>
<p>3. Process and way of working</p>

3.1 Are the banks obliged to follow certain processes (e.g., Know Your Client (KYC) or Customer Due Diligence (CDD))?

Pursuant to current US law, YES.

3.2 What kind of information do the banks request from (potential) clients (e.g., information about their business activities / in which countries they operate / who the UBO's are / expectations with respect to transactions / what the origin of assets/funds is)?

PLEASE SEE PARAGRAPH 2.4 ABOVE

Under KYC regulations banks are likely to research their applicants on the Internet and to ask many questions regarding the source of funds, frequency of anticipated transfers, proof of legitimacy, and will likely attempt to make contact with the applicant and may even seek to visit the applicant's place of business when it is local.

3.3 Are cash transactions allowed? Can banks impose strict rules when it comes to cash transactions on its accounts? If yes, please describe/provide examples.

Cash transactions are allowed in the US but are subject to reporting if a customer attempts a currency transaction in excess of US\$10,000. This limitation is a part of the BSA-AML-KYC regulations and is mandated under Federal law. EXAMPLE: a non-US person wishes to open an account in the US using the amount of US\$20,000 in currency as his initial deposit. The bank will prepare what is called a Suspicious Activity Report ("SAR") and submit the report to FinCEN (see Paragraph 1.1). In addition, A SAR may also be filed for smaller transactions if the customer appears to be deliberately avoiding the \$10,000 threshold. This is known as structuring. EXAMPLE: – same non-US customer, but he brings US\$5,000 on his first visit, then US\$3000 three days later, then a week later, brings US\$5000, than the following week, brings US\$7000. Although each individual transaction comes under the US\$10K threshold, one could argue that the depositor is making a structured transaction so as to avoid a SAR filing.

3.4 Do the banks require proof of compliance with national and international laws and regulations?

Each US bank is required to conduct its own individual compliance reporting and cannot rely on proof of compliance as submitted by another institution regardless of location.

3.5 Do banks have to report transactions which do not comply in all respect with the regulations developed? If yes, to which institutions?

PLEASE SEE THE AGENCIES LISTED IN PARAGRAPH 1.1.

3.6 Are there requirements for recordkeeping or reporting large currency transactions? When must such a transaction be reported and to which institution?

PLEASE SEE PARAGRAPH 3.3 ABOVE.

3.7 Can a bank liquidate an account on which non-complicit transactions took place without prior notification? What options does one have in fighting the liquidation of an account (e.g. objection procedure / legal procedure)?

Banks have the ability to freeze accounts pending the outcome of investigations of fraudulent and other non-compliant activities. In addition they may be required to freeze accounts by court order issued without prior notice. Legal procedures do exist for account holders to defend their interests in both civil and criminal proceedings.

Beside the liquidation of an account, non-compliant transactions under FinCEN (see Paragraph 1.1), may lead to the imposition of civil and criminal penalties as well as forfeiture of assets. BSA

penalties depend on the type of entity, the type of Anti-Money Laundering program, reporting or recordkeeping violation involved, and the degree of intent. Civil penalties, except for penalties assessed on requirements of the Report of Foreign Bank and Financial Accounts (FBAR), are assessed by the Financial Crimes Enforcement Network (FinCEN). FBAR assessment authority is delegated to the IRS. The examiner's decision to refer a case to FinCEN for a potential civil monetary penalty will depend upon the facts and circumstances of each case. The general standard for a FinCEN referral is "significant" BSA violation(s) or AML program deficiencies. This, along with indications of wilful behaviour, may warrant a referral to FinCEN.

4. Corporate bank account

4.1 What documents are needed in order to open a corporate bank account (e.g. extracts from official (foreign) government supervised company registries or Chambers of Commerce / Organizational Structure etc.)?

PLEASE SEE THE DOCUMENT REQUIREMENTS IN PARAGRAPH 2.1

4.2 Is the bank required to verify the organizational structure as provided in the organizational chart? Can a bank request additional documentation for the verification the organizational structure (e.g., Certificate of Incorporation / Certificate of Good Standing / Articles of Association / Company by-laws and/or statutes / Audited annual reports / List of shareholders / Identification documents)?

Pursuant to the bank's requirement to adhere to the BSA-AML-KYC regulations, the bank may request any additional documentation necessary to verify or confirm information related to any request for a bank account opening. SEE FURTHER UNDER PARAGRAPH 2.4

5. Documents needed to open a corporate bank account

5.1 What are the requirements for opening an individual account?

PLEASE SEE PARAGRAPH 1.7 ABOVE

5.2 What documents are needed in order to open an individual bank account?

PLEASE SEE PARAGRAPH 2.1 ABOVE.

5.3 Can a bank refuse to open an individual account? If yes, what are the requirements?

Banks in the US have completed and unfettered discretion to reject and/or deny the opening of an individual account. There are no legal mandates or requirements for the rejection of an account application in the US.

5.4 If applicable, what are the options to object to a refusal of an individual bank account (e.g., objection / legal procedure)?

- 1) Request the bank for a re-evaluation of their account rejection;
- 2) Locate an alternate bank for account opening.

6. Digital-/Cryptocurrency

6.1 Are accounts for cryptocurrency allowed? If yes, is such cryptocurrency account only available for companies or are individuals also allowed to acquire such an account? Also, please name the requirements for obtaining a cryptocurrency account.

Based on risk aversion and compliance issues, the vast majority of US banks (both Federal and State) remain sceptical of the value of cryptocurrency as an asset class. So far, only 2% of US institutions are opening cryptocurrency accounts and these institutions consist only of the largest

US institution. Because of the lack of Federal regulations enacted in order for US banks to have BSA-AML-KYC models in place, US banks are presently lacking information on how to do compliance on cryptocurrency account openings. More coming on this.

6.2 Are there requirements for recordkeeping or reporting large cryptocurrency transactions? When must such a transaction be reported and to which institution?

N/A in the US as of yet.

7. Opening an account without proof of Residency

7.1 Can an account be opened without proof of Residency?

If the customer's bank in his home country has a relationship with a US bank and his home bank helps him to open an account in the US. Not all banks have these relationships, and a US bank may not allow the account opening. OR, one can visit the US, go to a bank, and open an account with them. Certain documentation will be needed, so always call ahead to see the requirements before the journey is made.

7.2 Describe the customer identification and due diligence requirements for customers opening an account without proof of Residency.

Make contact with the target US bank and ask for the ID and diligence documents required.

8. Recent developments in retail banking

8.1 What recent developments in retail banking have taken place?

In the US, digital banking or digital-only bank is part of the broader context for moving to online banking, where banking services are delivered over the internet.

8.2 What retail banking services are offered to customers?

Checking and savings accounts, mortgages, personal loans, credit cards, and certificates of deposit (CDs).

9. Recent developments in Anti-Money Laundering (AML) and online banking

9.1 What recent developments in AML and online banking have taken place?

FinCEN's recent rule requiring covered financial institutions to identify and verify the identities of beneficial owners of legal entity customers at the time of account opening and certain times after.

Author: Robert Payne



Address: INTERNATIONAL TAX CONSULTANTS LLC, 16000 PINES BLVD., #822282, PEMPROKE PINES, FL 33082

Tel: +1 954 442-7861

e-mail: info@intl-tax.com

LinkedIn URL: N/A

Company URL: www.intl-tax.com

Company LinkedIn URL: N/A

With his extensive experience in business management and tax planning, Bob brings a wealth of organizational savvy and management acumen to client and professional inquiries. A former Federal prosecutor, Bob received his J.D. degree from the University of Baltimore School of Law and his LL.M (International Tax) degree from St Thomas University School of Law. A recognized expert in domestic and international tax matters, Bob served as the Managing Director for International Tax Consultants, LLC in Panama, Rep de Panama and US Trust Advisory Services in Miami FL, and handles the business planning, financial, accounting and tax matters for many major multi-national institutions.

Author: R. Mark Field



Address: Evans Petree PC

Tel: +1 901 474 6112 (direct) | +1 901 604 7571 (mobile)

e-mail: rfield@evanspetree.com

LinkedIn URL: www.linkedin.com/markfieldlaw

Company URL: www.evanspetree.com

Company LinkedIn URL: <https://www.linkedin.com/company/evans-&-petree-pc/>

Mark is a shareholder in Evans Petree PC, a Memphis, Tennessee-based law firm, an Adam Global board member, President of Adam Global Americas, and the founder of BNI GPT, an international BNI networking group. He is a Best Lawyer-recognized attorney. Mark advises a diverse range of clients, including high-tech companies, manufacturers, importers, software developers, eCommerce companies, professional service companies and consultants. He handles domestic and international business matters that include, among other things, supply chain, internet business, software development and distribution, information management, data mining, intellectual property, contractual and regulatory compliance matters. Mark is a past co-chair of the American Bar Association Section of International Law's Information Services and Technology and Data Protection Committee, and is a member of Canada Law and China Law Committees. He is also a member of the ABA Section of Intellectual Property Law.
