Governmental Decision no. 594/04.06.2008

on the approval of the Regulation for application of the provisions of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for prevention and combating terrorism financing acts

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This Decision enters into force at the date provided by Art. II para. 1 of the Governmental Emergency Ordinance no. 53/2008.
Text completed by the Governmental Emergency Ordinance no. 26/2010

In accordance with Article 108 from the Romanian Constitution, republished, and Article II para 2 from the Governmental Emergency Ordinance no. 53/2008 on modification and completion of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for prevention and combating terrorism financing acts, with subsequent modifications and completions,

The Romanian Government adopts this decision.

ART. 1

It is approved the Regulation for application of the provisions of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for prevention and combating terrorism financing acts,

Annex

Regulation for application of the provisions of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for prevention and combating terrorism financing acts

Chapter I
General Provisions

Art. 1

In application of the provisions of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting of some measures for prevention and combating terrorism financing acts, with subsequent modifications and completions, further called the Law no. 656/2002, this Regulation settles the measures of prevention and combating money laundering and terrorism financing acts.

Art. 2

(1) In the spirit of this Regulation, the terms and expressions below have the following significations:

a) Suspicious Transaction Report – document whose form and content is established by decision of the National Office for Prevention and Control of Money Laundering Board, further called the Office, through which the persons provided for in the article 8 of the Law no. 656/2002 submit to the Office the information regarding the operations suspected of money laundering and terrorism financing;
b) Cash Transaction Report – document whose form and content is established by decision of the National Office for Prevention and Control of Money Laundering' Board, further called the Office, through which the persons provided for in the article 8 of the Law no. 656/2002 submit to the Office the information regarding the transactions in cash whose minimum limit represents the equivalent in lei of 15,000 de euro;

c) External Transfers Report – document whose form and content is established by decision of the National Office for Prevention and Control of Money Laundering' Board, further called the Office, through which the persons provided for in the article 8 of the Law no. 656/2002 submit to the Office the information regarding the external transfers in or out of the accounts, whose minimum limit represents the equivalent in lei of 15,000 de euro;

d) Third parties – credit and financial institutions, situated in Member States and the similar ones, situated in third country, who meet the following requirements:

1. they are subject to mandatory professional registration for the performing of the activity, recognized by law;
2. they apply customer due diligence requirements and record keeping requirements as laid down in the Law no. 656/2002 and this Regulation and their compliance with the requirements of these acts is supervised in accordance with the Law no.656/2002.

(2) The following are not considered third parties in the meaning of para. 1 let. d): specialized entities which perform services of foreign currency exchange, payment institutions which provide services in accordance with art. 8 letter f), listed as payment institutions in the Governmental Emergency Ordinance no. 113/2009 on payment services, and postal offices which provide payment services.

Chapter II
Customer Due Diligence and standards for processing of the information on money laundering and terrorism financing

Art.3
The persons provided for in article 8 of the Law no. 656/2002 shall adopt, during the performance of their activity, adequate measures for prevention money laundering and terrorism financing acts, and, in this purpose, based on risk, shall apply standard, simplified or enhanced customer due diligence which shall allow also the identification, by case, of the beneficial owner.

Section 1
Standard customer due diligence
Art. 4
(1) The persons provided for in article 8 of the Law no. 656/2002 shall apply the standard customer due diligence in the following situations:

a) when establishing a business relationship;

b) when carrying out occasional transactions amounting at least EUR 15 000 or its equivalent, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

c) when there are suspicions of money laundering or terrorist financing, regardless the value of transaction or any derogation from the obligation to apply standard customer due diligence provided for in the Law no. 656/2002 and this Regulation;

d) when there are doubts about the veracity or adequacy of previously obtained customer identification data;

e) when purchasing or exchange in casinos gambling chips with a minimum value of the equivalent of EUR 2 000.

(2) When the amount is not known when the transaction is accepted, the natural or legal person obliged to establish the customers identity shall proceed to their identification as soon as possible, when she/he is informed about the value transaction and when it was ascertained that the minimum limit provided for in para (1) letter b) has been reached.

(3) The persons provided for in the art. 8 of the law no. 656/2002 shall apply the standard customer due diligence to all new customers as well as, as soon as possible, based on the risk, to all existent customers.

(4) The credit institutions and financial institutions shall not open and perform anonymous accounts, respectively accounts for which the identity of the holder or of the beneficial owner is not known and highlighted properly.

(5) In the spirit of para 3, the persons provided for in the article 8 of the Law no. 656/2002 shall apply standard customer due diligence to all anonymous account or savings checks holders or beneficial owners, as soon as possible.

(6) The use of any type of existing anonymous accounts and savings checks shall not be allowed unless after the application of standard customer due diligence provided in the para (5).
Art. 5

(1) Standard customer due diligence measures are:

a) identifying the customer and verifying the customer's identity on the basis of documents, and, by case, of information obtained from reliable independent sources;

b) identifying, where applicable, the beneficial owner and taking risk-based checks on customer's identity so that the information obtained by the person covered by the article 8 of the Law no. 656/2002 are satisfactory and it allows to understand the ownership and control structure of the customer – legal person;

c) obtaining information on the purpose and intended nature of the business relationship;

d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that these transactions are consistent with the information about the customer, his business and risk profile, including, by case, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

(2) The identification data of the customers shall include at least:

a) as regards natural persons - the data of civil status mentioned in the documents of identity provided by the law;

b) as regards legal persons - the data mentioned in the documents of registration provided by the law, as well as the proof that the natural person who manages the transaction, legally represents the legal person.

(3) The persons provided for in the article 8 of the Law no. 656/2002 shall apply all the measures provided for in para (1) letter a) – d), having the possibility to take into the account the circumstances based on the risk, depending on the type of the customer, business relationship, product or transaction, case in which he has to demonstrate to the authorities or to the structures provided for in the article 17 of the Law no. 656/2002 that the customer due diligence measures are adequate in view of the risks of money laundering and terrorism financing.

(4) When the persons provided for in the article 8 of the Law no. 656/2002 are unable to comply with para 1 letter a)-c), it may not carry out the transaction, start the business relationship, or shall terminate the business relationship, and shall report this issue as soon as possible to the Office.

(5) The provisions of para 4 shall not be applied to the persons provided for in the article 8 letters e and f of the Law no. 656/2002 as regards the information obtained from or regarding the customers when it is ascertaining the legal position for that customer or performing task of defending or representing that customer in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, even this information has been obtained previously, during or after this procedure.

(6) The persons provided for in the article 8 of the Law no. 656/2002 have the obligation to verify the identity of the customer and of the beneficial owner before establishing business relationship or carrying out the occasional transaction.

Art. 6

(1) The persons provided for in the article 8 of the Law no. 656/2002 may use in the purpose of applying standard customer due diligence measures provided for in the art. 5 para (1) letter a) - c) of this Regulation, the information regarding the customer obtained from third parties, even the respective information is obtaining based on documents whose form is different to that used at internal level.

(2) In the situation provided for in the para 1 the liability for the compliance with all standard customers due diligence measures is on to the persons who use the information obtained from the third party.

(3) The third party from Romania which intermediates the contact with the customer shall submit to the person who applies standard due diligence measures all the information obtained within own identification procedures, so the requirements provided for in art. 5 para (1) letter a)-c) of this Regulation to be respected.

(4) Copies of the documents based on which the identification and the verification of the customer’s identity or, by case, beneficial owner’s identity was accomplished, shall immediately be sent by the third party from Romania, by request of the person to whom the customer has been recommended.

(5) The persons provided for in the article 8 of the Law no. 656/2002 have the obligation to ensure the application of the provisions of the Law no. 656/2002 and of this Regulation also in the case of the externalized activities or those performed by agents. The agents and the entities through which the externalized activities are performed by the previously mentioned persons, shall not be considered third parties, in the spirit of article 2 para (1) letter d) of this Regulation.

(6) The persons provided for in the article 8 of the Law no. 656/2002 shall not use for accomplishing the customer due diligence requirements provided for in the art. 5 para (1) letter a) – c) of this Regulation the customer due diligence measures applied by a third party from a third country, on which the European Commission adopted a decision in this purpose.
Section 2
Simplified customer due diligence measures

Art. 7
(1) By way of derogation from article 4 para (1) letter a), b) and d), the persons provided for in the article 8 of the Law no. 656/2002 shall apply simplified customer due diligence measures where the customer is a credit or financial institution from a member state or, by case, a credit or financial institution situated in a third country which imposes requirements equivalent to those laid down in the Law no. 656/2002 and supervised for compliance with those requirements.

(2) By way of derogation from article 4 para (1) letter a), b) and d), the persons provided for in the article 8 of the Law no. 656/2002 may apply simplified customer due diligence measures in the following situations:

a) life insurance policies where the insurance premium or the annual installments are lower or equal to the equivalent in lei of the sum of 1,000 EUR or if the single insurance premium paid is up to the equivalent in lei of 2,500 EUR. If the periodic premium installments or the annual sums to pay are or are to be increased in such a way as to be over the limit of the sum of 1,000 EUR, respectively of 2,500 EUR, the equivalent in lei, the standard customer due diligence measures customers’ identification shall be required;

b) in acts for accessing the pension funds;

c) in electronic money, as defined in Governmental Emergency Ordinance no. 99/2006 on credit institution and capital adequacy, approved with modifications and completions by the Law no. 227/2007 related to the products and transactions which have the following features:
   1. the device cannot be recharged, the maximum amount stored in the device is no more than EUR 150 or
   2. the electronic device can be recharged, a limit of the equivalent in lei of EUR 2 500 is imposed on the total amount transacted in a calendar year, except when an amount of the equivalent in lei of EUR 1 000 or more is redeemed in that same calendar year by the bearer.

Art. 8
By way of derogation from article 4 para (1) letter a), b) and d), the persons provided for in the article 8 of the Law no. 656/2002 may apply simplified customer due diligence measures for the following customers:

a) companies whose securities are admitted to trading on a regulated market within the meaning of Law no. 297/2004 on capital market, with subsequent modifications and completions, in one or more Member States and listed companies from third countries which are subject to disclosure and transparency requirements consistent with Community legislation;

b) beneficial owner of the transactions performed through collective accounts administrated by notaries and other independent legal professions from the member states or from third countries subject to requirements to combat money laundering or terrorist financing consistent with the standards provided in the Law 656/2002 and this Regulation and they supervise them for compliance with those requirements, provided that, by request, the administrators of these collective accounts to disseminate the information on the identity of the beneficial owner to the accounts depository institutions;

c) domestic public authorities;

d) the customers who have a low risk on money laundering or terrorism financing and who fulfill the following criteria:
   1. they are public authorities or bodies charged with the relevant competencies based on the communitarian legislation;
   2. their identity is publicly available, transparent and certain;
   3. their activities and accountable evidences are transparent;
   4. the customer is responsible in front of a communitarian institution or an authority within a member state or the customer’s activity is under control by specific checking procedures;

Art. 9
(1) By way of derogation from the provisions of the art. 4 para. 1 letter a), b) and d), the persons provided for in the art. 8 of the Law no. 656/2002 may apply simplified due diligence measures in case of products and operations connected with these that fulfill the following criteria:

a) the product is offered based on a written contract;

b) the operations related to the product is performed through an account of the customer opened with a credit institutions from member states or third countries which impose similar obligations as the ones provided by the Law no. 656/2002 and this Regulation;

c) the product or the operations connected to the product are nominatives and according to their nature allow a proper application of the provisions of the art. 4 para. 1 letter c) from this Regulation;
d) the value of the product is not over the limit provided at the art. 12 para. 1 letter a) of the Law no. 656/2002 in case of insurance policies and of the similar saving products or over the threshold of 15,000 euro or its equivalent in case of other products;

e) the beneficiary of products or connected operations cannot be a third person, excepting death, invalidity, predetermined ages or other similar situations;

f) in case that the products or connected operations allow investments in financial assets or debts, including any type of insurances or any contingent debts, if the following cumulative criteria are fulfilled:
1. the benefits of the products or of the connected operations are materialized just on a long term;
2. the product or the connected operations cannot be used as guaranty (assurance);
3. during the contractual relation, anticipated payments cannot be made, there are not provided clauses of anticipated cancellation and the contractual obligations cannot be priory cancelled.

Art. 10
(1) In the situations provided for in the art. 7 and 8, the persons provided for in the art. 8 from the Law 656/2002 shall obtain adequate information about their customers and shall permanently monitor their activity in order to establish if they are framed within the category for which is provided the respective derogation.

(2) The Office shall inform the authorities with similar attribution from other member states and the European Commission about the cases in which it is considered that a third country fulfills the obligation provided for in the articles 7 and 8 or in the situation provided for in the art. 9.

Art. 11
The persons provided for in the art. 8 of the Law 656/2002 cannot apply the provisions of art. 7 – 9 in case of customers as credit institutions, financial institutions or companies of whose securities are traded on a regulated market from third countries, regarding of which the European Commission adopted a decision on this regard.

Section 3
Enhanced due diligence measures
Art. 12
(1) The persons provided for in the art. 8 from the Law no. 656/2002 shall apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the standard customer due diligence, in all situations which by their nature can present a higher risk of money laundering or terrorist financing. The applying of the enhanced due diligence measures is mandatory at least in the following situations:
   a) in case of persons who are not physically present the performance of the operations;
   b) in case of correspondent relations with credit institutions within third country;
   c) regarding the occasional transactions or business relations with the politically exposed persons who are resident within another member state of European Union or of the European Economic Space or within a foreign state;

(2) In case provided at the para. 1 letter a) the persons provided for in the art. 8 of the Law no. 656/2002 shall apply one or more of the following measures, without that enumeration being limitative one:
   a) requesting documents and additional information in order to establish the identity of the customer;
   b) taking additional measures for checking and verification of supplied documents or requesting a certification from a credit or financial institution under the obligation of preventing and combating money laundering and terrorism financing equivalent with the standards provided for in the Law 656/2002 and this Regulation;
   c) requesting that the first operation to be performed through an account opened on the name of the customer with a credit institution which is subject to the obligations on prevention and combating money laundering and terrorism financing equivalent with the standards provided for in the Law no. 656/2002 and this Regulation.

(3) In case provided in the para. 1 letter b), credit institutions shall apply the following measures:
   a) gather sufficient information about the credit institution from a third country for fully understanding the nature of its activity and for establishing, based on the publicly available information, its reputation and the quality of supervision;
   b) assess the control mechanisms implemented by the credit institution from a third country in order to prevent and combat money laundering and terrorism financing;
   c) obtain the approval from executive management before establishing a new correspondent relation;
   d) establish based on documents the liability of each of the two credit institutions;
   e) in case of correspondent account directly accessible for the customers of credit institution from third country, it shall ensure that this institution has applied standard customer due diligence measures for all the
customer who has access to these accounts and that it is able to provide, upon request, information on the customers, data obtained following the enforcement of the respective measures.

(4) In respect of occasional transactions or business relations with politically exposed persons, the persons provided for in the art. 8 of the Law no. 656/2002 shall apply the following measures:
   a) to have in place risk based procedures which allow the identification of the customers within this category;
   b) to obtain executive management’s approval before starting a business relationship with a customer within this category;
   c) to set up adequate measures in order to establish the source of income and the source of funds involved in the business relationship or in the occasional transaction;
   d) to carry out an enhanced and permanent supervision of the business relationship.

(5) The persons referred to in article 8 of Law no. 656/2002 shall pay a enhanced attention to the transactions and procedures which, by their nature, may favor anonymity or which may be linked with money laundering or terrorism financing.

Chapter III
Other procedural dispositions and sanctions

Art. 13
(1) Financial and credit institutions shall apply, according to the situation, in their branches and majority subsidiaries from other third country, customer due diligence and record keeping measures, equivalent at least with those provided for by the Law no. 656/2002 and the present Regulation.
(2) When the legislation of the third country does not allow for such equivalent measures to be applied, the credit and financial institutions shall inform the competent Romanian authorities, in accordance with the provisions of article 17 of Law no. 656/2002.
(3) When the legislation of the third country does not allow the application of the customer due diligence mandatory measures, the credit and financial institutions shall apply the necessary customer due diligence measures, in order to efficiently cope with the money laundering or terrorism financing risk.

Art. 14
(1) When the application of the customer due diligence measures is mandatory, the persons provided for in article. 8 of Law 656/2002 shall keep a copy of the document used, as proof of identity or identity reference, for a period of at least 5 years, starting with the termination date of the relationship with the customer.
(2) The persons provided for in article. 8 of Law 656/2002 shall keep, in an adequate format so it can be used as evidence in court, secondary or operative evidence and recordings of all financial transactions within the business relationship or occasional transaction, for a period of at least 5 years starting from the termination of the business relationship, respectively of performing the occasional transaction.

Art. 15
(1) The persons referred to in article 8 para (a)-(d), (g)-(j), as well as the leading structures of the liberal legal professions provided for in article 8 para (e) and (f) of Law no. 656/2002 shall designate, by internal decision act draw up in accordance with the Annex part in the present Regulation, one or more persons with responsibilities in the enforcement of Law no. 656/2002 and the present Regulation, whose name shall be transmitted to the Office, together with the nature and extent of the mentioned responsibilities. The internal decision act shall be transmitted to the Office either directly or by post with receipt confirmation.
(2) The persons provided for in para (1) shall establish adequate politics and procedures on customer due diligence, reporting and record keeping of secondary and operative evidence, internal control, assessing and managing the risks, conformity management and communication in order to prevent and hamper the money laundering and terrorism financing suspicious transactions, ensuring the proper training of the employees. Credit and financial institutions are obliged to designate a conformity officer, subordinated to the executive management, which coordinates the implementation of the internal politics and procedures for the application of the Law no. 656/2002 and the present Regulation.
(3) The persons designated in accordance with para (1) and (2) are responsible for the carrying out of the responsibilities established for the application of Law no. 656/2002.
(4) The provisions of para (1) - (3) are not applicable to natural and legal persons provided for in article 8 (k) of Law no. 656/2002.
(5) The financial and credit institutions must inform all their branches and subsidiaries from the third countries about the politics and procedures set up in accordance with para (2).
Art. 16
Credit and financial institutions are obliged to keep in place internal procedures and to have systems which allow the promptly transmission, by Office’s or prosecution bodies request, of the information regarding the identity and the nature of the relationship for the customers specified in the request, with which a business relationship is or has been in progress in the last 5 years.

Art. 17
(1) The reports provided for in article 3 para (1) of Law no. 656/2002 shall be forwarded to the Office immediately, and those provided for in article 3 para (6) and (7) of Law no. 656/2002, in 10 working days at most, based on a working methodology specially set up for this purpose by the Office.

(2) The Office establishes, by an internal working procedure, a system for carrying out the financial analyses, which shall be periodically adapted, based on the identified risk indicators.

Art. 18
(1) The Office shall inform the authorities with similar attribution from other member states and the European Commission about the cases of third countries which are thought not to fulfill the requirements provided for in article 18 para (4) (b)-(d) of Law no. 656/2002.

(2) The Office shall inform the European Commission about the cases when a third country is in the situation described in article 13 para (3).

(3) The Office shall inform the authorities with similar attribution from other member states and the European Commission about the case of a third country which is thought to impose the enforcement of customer due diligence and record keeping procedures equivalent with those provided for in article 656/2002 and the present Regulation, and the enforcement of these is supervised in a manner equivalent with that regulated by the Law no. 656/2002 and the present Regulation.

Art. 19
(1) The breaching of the dispositions of article 6 para (3) and (4), article (10) para. 1, article 13 para (2) and (3) and article 16, by the persons referred to in article 8 of Law no. 656/2002, constitutes infringement and is sanctioned by fine between 10,000 lei and 30,000 lei.

(2) The dispositions of art.22 para (3)-(5) of Law nr.656/2002 are applicable in accordance.

Regulation Annex

The name of the legal person:............
Unique Identification Code............
Registration number with the NRT
Main premises......................
Telephone/fax.....................

To:
National Office for Prevention and Control of Money Laundering
The legal person.................................................. represented by (manager / director / president - name surname, PIN) ......................................................, with the main activity object of (name and CAEN).........................................................., in accordance with the provisions of art. 14 of Law nr. 656/2002 for the prevention and sanctioning of money laundering, and for setting up certain measures for the prevention and combat of terrorism financing, with subsequent modifications and completions, empowers (name and surname of one or more persons, holder/holders of ID............, series......., no........ PIN...............................in the relationship with National Office for Prevention and Control of Money Laundering, with responsibilities in the application of the Law mentioned above. In order to fulfill the provisions of Law no. 656/2002, with subsequent modifications and completions, the designated person/persons shall have the following responsibilities:
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..................................................................................................................................................

STAMP
SIGNATURE

*Note:
one sample shall be sent to the Office
one sample shall be kept at the issuer’s premises