16 - Instructions issued by the Central Bank of Kuwait regarding Money Laundering Transactions

A- Instructions No. (2/SB/50/97) to all local banks in respect of combating Money Laundering and Suspicious Transactions.

B- Guidelines for the identification of Suspicious Transaction Patterns.

GOVERNOR

Rajab 17, 1418 H.
November 17, 1997

THE CHAIRMAN

Instructions No. (2/SB/50/97) to all local banks in respect of combating Money Laundering and Suspicious Transactions

I would like to refer to our letter dated March 30, 1993 regarding application of specific measures suitable for our banking and financial system, to be implemented for combating money laundering transactions. Such measures have been deliberately depicted from the general framework of the Forty Recommendations issued by the Financial Action Task Force (*FATF*), on money laundering. At the meantime, your bank has been requested to take necessary arrangements toward effective adoption of those specific nine recommendations that may be applied out of the framework of such Forty recommendations as mentioned hereabove.

Taking into consideration the accelerated developments in this arena; and the introduction of crucial amendments by the concerned committee to some of the Forty FATF Recommendations above mentioned; beside the information and data available at the Central Bank of Kuwait resulting from the continual follow-up to all affairs related to such transactions, particularly those connected with the banking and financial sector, in the absence of the necessary judicial regulations in this regard; AND

In order to safeguard our banking institutions against illegal practices and illegitimate activities that might be undertaken by some individuals and parties; and to enhance their role in combating such transactions; and to avoid any adverse effects that may be caused due to absence of the necessary controls in this connection, whether on the level of the banking and financial sector in particular, or the State in general;

To this end, I would like to attach herewith a copy of the Instructions No. (2/SB/ 50/97) in respect of combating money laundering transactions and suspicious operations. Banks are immediately required to take necessary measures to meticulously adopt all directives included therein. Correspondingly, I would like to particularly refer to the provisions of Item No. (8) of these instructions which stipulate that the Central Bank of Kuwait must be promptly furnished with the decisions to be agreed on among the local banks in respect of treating the cases that may be received by any of them, where doubts might be raised in respect of money laundering and suspicious transactions.

With my best regards,

SALEM ABDUL AZIZ AL-SABAH

Instructions No. (2/SB/50/97) to all Local Banks in respect of Combating Money Laundering and Suspicious Transactions

1- Banks should not open or keep anonymous accounts or accounts in obviously fictitious or false names. In this regard, the following requirements should be fulfilled for customer identification:

A- Regarding natural persons:

The bank should take necessary measures to verify:

the identity of their clients (or the identity of their proxies) based on official identification documents, and to record the particulars of such documents, when establishing business relations or conducting transactions with natural persons, in particular: at opening of accounts or passbooks, requesting cheque books, concluding facility contracts, managing their funds whether in the form of managing portfolios or shares in mutual funds, renting of safe deposit boxes, or performing other transactions and services.

B- Regarding legal persons:

The bank should take necessary measures to verify:

- the legal existence and structure of the customer, by obtaining proof of incorporation of the institution or company and related information, as well as its Articles of Association. Meanwhile, it is necessary to prove verity and validity of information included in the above mentioned documentation.
- availability of actual authorization pursuant to official documents for the specified person with the power to act for the institution / company, where the identity of such person shall be verified.
- the bank should take reasonable measures to obtain information about the true identity, origin or official seat of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to

whether these clients are acting on their own behalf, for example, in the case of domiciliary companies (i.e. institutions or corporations that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered head office is located).

2- An item should be added to the form used by the bank for opening an account. Such item should mention the bank's entitlement to set aside funds transferred to the cutomer's account, should any doubts arise in connection with the likelihood of the relevant underlying transaction involving a money laundering operation. Customers already holding accounts with the bank should be informed of such dispositions.

3- Banks should maintain, for at least five years, all necessary records on transactions conducted, both domestically or internationally, to enable them to comply swiftly with information requests from the Central Bank of Kuwait or other competent authorities in respect of data or information related to these transactions.

Such records must be sufficient and complete to permit reconstruction of individual transactions and supporting documentation, including the amounts and types of currency involved and the related parties, together with types of transactions and dates thereof.

4- Banks should keep records on customer identification (e.g. copies or records of official identification documents and account files and business correspondence for at least five years after the account is closed. These documents should be available to the perusal of the Central Bank of Kuwait and other domestic competent authorities in the context of relevant prosecutions and investigations.

5- Special attention should be sufficiently paid to money laundering threats and risks inherent in advanced or developing technologies that might favour anonymity or related individual identity or fund sources, and take measures, if needed, to prevent their use in money laundering schemes.

Regarding electronic transfers conducted through banks (such as SWIFT), the bank should always ensure that such transfers encompass the needed essential data, particularly the names of the transferring parties and beneficiaries.

6- Banks, their directors, officers and employees should not warn their customers if suspicions might arise about their activities until proper investigation is carried out to verify seriousness of such suspicions.

7- Banks should pay special attention to all complex, or large operations and transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined where the findings should be established in writing.

In this connection, particular emphasis should be placed on large transfers to the bank customers, especially if such transfers have no apparent purpose and are not commensurate with beneficiary's type of activity, or raise suspicions regarding their function and purpose. Similarly, emphasis should be placed on huge cash amounts whose owners attempt to get them exchanged for other currencies or to have them deposited in their accounts and such amounts might raise suspicions at the bank regarding origins thereof.

In such cases, the bank should undertake the following:

A- Setting aside, into intermediate accounts, the funds so-transferred until verifying that they are not related to suspicious transactions, through contacting the customers and requesting therefrom submission of relevant documents and justifications supporting legality of these funds. Such funds should be transferred to customer's account immediately upon completion of the above measures, whenever the bank is convinced that they are not connected with suspicious transactions.

B- Informing the Central Bank of Kuwait of the case to take necessary measures in event of non-compliance of the customer with the requirements of presenting the justifications and documents supporting the legality of the transferred amounts.

8- Banks should engage into full and effective coordination among themselves in respect of handling of cases and offers that reach any of them, where they deem connected with money-laundering or suspicious transactions. The Central Bank of Kuwait should be furnished with information regarding the collective measures deriving from such coordination.

9- The Central Bank of Kuwait should be apprised of all the cash purchases of all currencies (including the KD), as well as all the clients' cash deposits in all currencies, (except for the KD), equaling or exceeding the amount of Kuwaiti Dinars Ten Thousand (KD 10,000), in accordance with the two forms attached herewith.

The Central Bank of Kuwait should be provided with the relevant data every quarter and during the first week following the covered quarter. Each statement shall include the cash purchases and deposits within the three months preceeding the month where the statement is prepared.

10- Banks should develop appropriate internal policies and training programs for anti-money laundering operations and other suspicious transactions.

Such policies and programs should include the following as a minimum:

A- Setting a specialist and highly efficient unit, to oversee the compliance with the set out measures and controls for combating money laundering operations and suspicious transactions. It is recommended that such unit may be independent, or to be a part of the bank's internal auditing system.

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B- Offering continued training programs to the bank's staff members and employees to acquaint them with the latest developments in money laundering operations and other suspicious transactions. Such programmes should be carefully designed to upgrade employees' abilities and competence with respect to recognition of these operations, their patterns and ways of combat.

11- Banks should seek assistance of the attached guidelines - established by the Central Bank of Kuwait - regarding the identification and monitoring of suspicious patterns of customers' behaviour. Correspondingly, these guidelines should be used as an educational tool for the bank staff members, and to be continually updated in line with new developments.

12- All banks should ensure the compliance with the above instructions by all of their branches and subsidiaries located abroad.

Banks shall ensure validity of such compliance, particularly if such branches and subsidiaries operate in countries with no or insufficient anti-money laundering measures. In case the local laws of host countries prohibit this implementation, the Central Bank of Kuwait should be duly informed.

Banks should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these recommendations. The background and purpose of such transactions should be examined. At the meantime, findings must be registered in writing, whenever feasible.

13- These instructions shall be operative as effective their date of issuance, and they supersede any previous conflicting instructions issued in this concern.

November 10, 1997

Guidelines for the Identification of Suspicious Transaction Patterns

First: Money Laundering Using Cash Transactions:

1- Unusually large cash deposits made by an individual or company whose business activities would normally be generated by cheques and other instruments.

2- Substantial increase in cash deposits of any individual or business without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account particularly to a destination not normally associated with the customer.

3- Customers who deposit cash funds by means of numerous deposit vouchers so that the amount of each deposit is unremarkable, although the total of all such deposits aggregates to a significant amount.

4- Company accounts whose transactions, both deposits and withdrawals, are carried out in cash rather than in the forms of debit and credit normally associated with commercial operations (e.g. cheques, Letters of Credit, Bills of Exchange, etc.).

5- Customers who constantly pay-in or deposit cash to cover requests for bankers' drafts, money transfers or other negotiable and readily marketable money instruments.

6- Customers who seek to exchange large quantities of low denomination banknotes for those of higher denomination.

7- Frequent exchange of cash funds into other currencies, in case such exchange operations are not justified by the customers' type of activity.

8- Branches having unusually frequent cash transactions, while their Head Office statistics reflect a decline in such cash transactions.

9- Customers whose deposits contain counterfeit banknotes or forged documents.

10- Customers transferring large sums of money to or from overseas locations under instructions for payment in cash.

11- Large cash deposits using electronic deposit facilities, thereby avoiding direct contact with bank staff, or those in charge at the bank.

Second : Money Laundering Using Bank Accounts:

1- Customers who wish to maintain a number of trustee or clients' accounts which do not appear consistent with their type of business.

2- Customers who have numerous accounts in which they make cash deposits, and whereby the total of such deposits aggregates to a large amount.

3- Any individuals or companies whose accounts do not practically reflect the usual pattern of banking or economic activities that require banking services, but such accounts are used to receive or disburse large sums which have no obvious purpose, or have no relationship to the account holder and/or his business.

4- Reluctance to provide normal information when opening an account, providing minimal or fictitious information, or providing information that is difficult or highly expensive for the bank to verify.

5- Customers who appear to have accounts with several banks within the same locality.

6- Cash settlements or payments out (payment orders, remittances), with customer credit balances on the same or previous day.

7- Depositing of large cheques by third parties to be endorsed in favour of the customer.

8- Large cash withdrawals from a previously dormant and inactive account, or from an account which has just received an unexpected large credit from abroad.

9- Increased use of electronic deposit facilities for a certain account, and sudden increase in activity in such accounts.

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10- Companies' representatives avoiding contact with the bank, or bank's officers.

11- Substantial increases in deposits of cash or negotiable instruments by firms or companies, using their client accounts or trust accounts, especially if these deposits are promptly transferred to other accounts.

12- Reluctance by the customer to use his credit accounts or available banking facilities which would normally serve the customer's interest. (for example: avoiding high interest rates on large debit balances despite holding credit balances).

13- Large number of individuals making deposits into the same account without adequate explanation therefor.

Third: Money Laundering Using Investment Related Transactions:

1- Purchasing of securities to be held by the financial institution in safe custody, where this does not appear appropriate given the customer's apparent standing.

2- Back-to-back deposit/loan transactions with subsidiaries of, or affiliates of, overseas financial institutions located in known drug-trafficking areas.

3- Requests by customers or portfolios regarding purchase or sale of investment instruments or services (either foreign currency or securities), where the source of the funds is unclear or not consistent with the customer's apparent activities.

4- Larger settlements in respect of purchase and sale of securities concluded in cash form.

5- Buying and selling of a security with no discernible purpose or concluded in circumstances which appear unusual.

Fourth: Money Laundering by Off-shore International Activity:

1- Customer introduced by overseas institutions based in countries where production of drugs or drug trafficking is prevalent.

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2- Use of Letters of Credit and other methods of trade finance to move money between countries where such trade under the letter of credit is not consistent with the customer's usual business.

3- Customers who pay/receive regular and large amounts, through cash or remittance by fax or telex, that cannot be proven legitimate and related to transactions with countries which are commonly associated with the production, processing or marketing of drugs; or prescribed terrorist organizations; or tax-haven countries.

4- Building up of large balances, not consistent with the known turnover of the customer's business, and subsequent transfer to account(s) held overseas by other parties.

5- Transfers to and by the customer without passing through his account at the bank.

6- Frequent and regular requests for travelers cheques, or foreign currency drafts to be issued.

7- Frequent paying-in of travelers cheques or foreign currency drafts in the customer's account.

Fifth: Money Laundering Involving Financial Institution Employees and Agents:

1- Changes in employees characteristics, and life style (e.g. lavish life style or avoiding taking holidays and vacations).

2- Sudden changes in employee or agent performance, (e.g. the remarkable or unexpected expansion in the agent's business).

3- Deals with an agent where the identity of the ultimate beneficiary or counterparty is undefined, contrary to normal procedure for the type of business concerned.

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Sixth: Money Laundering by Secured and Unsecured Lending:

1- Customers who repay problem loans unexpectedly.

2- Requests to borrow against assets held by another financial institution or a third party, where the origin of the assets is not known or the assets are inconsistent with the customer's known standing and activities with the bank.

3- Requests by customers on behalf of their financial institutions to provide or arrange finance where the source of the customer's financial contribution to a deal is unclear or undetermined, particularly where private property or real estate is involved.