



GENERAL SUPERINTENDENCE OF FINANCIAL INSTITUTIONS

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Gaby Vargas Leal

Date: [handwritten] 07-22-11

Time: [handwritten] 9:46 am Gaby

DGSBP and GF 067-2011

July 21, 2011

Atty. Jafet Zúñiga Salas, Interim Director
Technical Services Office

Cecilia Sancho Calvo, Director [illegible handwritten notation]
**Supervisory Office for
Private Banks and Financial Groups**

Re: DGST-284_2010003661 of September 2, 2010

We are writing in reference to official letter DGST-284-201003661 of September 2, 2010, with which your office forwarded a copy of the documentation received from the entity Liberty Reserve S.A., in order for this department to evaluate said documentation and send our comments, objections (if any), or favorable opinion. This step was taken in order to continue with the registration process, in accordance with Article 15 of Act 8204 and the regulations thereto.

Our analysis found that Liberty Reserve, S.A. met the requirements set forth in official letter SUGEF 4407-2009-200809699 of December 10, 2009, except for some requirements pertaining to the compliance manual.

Therefore, in accordance with Order SUGEF 11-06, “Rules for registration with the General Superintendence of Financial Institutions (SUGEF) by natural persons or legal entities which engage in any of the activities described in Article 15 of the Narcotics, Psychotropic Substances, Unauthorized Drugs, Money Laundering, and Related Activities Act (Act No. 2804),” the Technical Services Office may continue with the respective process of registration and service of notice. However, the following remarks are noted:

1. The agreements made between Liberty Reserve and the Exchangers were reviewed, and the following points were noted:

“B) LIBERTY RESERVE shall not be responsible or bear any liability for any exchanges made between THE AUTHORIZED AGENT and its customers that are illegal under Costa Rican law and/or in the country of origin and/or place of operation of THE AUTHORIZED AGENT. Furthermore, LIBERTY RESERVE shall not be responsible for any conduct of THE AUTHORIZED AGENT that is deemed fraudulent or violates Costa Rican and/or foreign rules or regulations, and that results from flaws in THE AUTHORIZED AGENT’s security procedures, management procedures, and/or procedures to verify its customers and/or users.”

In this regard, note that according to the provisions of Act 8204, the Regulations to Act 8204, and the rules in force, Liberty Reserve, S.A. is required to sufficiently identify its customers, and to review and document the true origin and destination of the funds received, in order to prevent money laundering and terrorist financing. Consequently, the company cannot attempt to free itself from this responsibility through an agreement, and it therefore must make the appropriate changes.



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2. Official letter SUGEF 4407-2009-200809699 of December 10, 2009 reported changes needed to the Compliance Manual. Of these, the changes listed below still need to be made:
- c) *Policies, procedures, and processes to detect, monitor, and report to the Compliance Officer and the supervisory bodies any suspicious transactions, such as transactions that do not follow the pattern of habitual transactions, and transactions that are not significant (according to the amount set by the financial institution) but which are periodic and lack any evident financial or legal basis.*
- ✓ The manual or computerized monitoring procedures that the Compliance Officer uses or will use to detect unusual transactions. Indicate the names of the reports generated, the frequency with which information is or will be reviewed and analyzed, and the actions to be taken based on the results (including preserving the pertinent evidence). This takes into account the fact that unusual transactions are usually detected two ways: through reports by officials, and through monitoring by the Compliance Officer.
 - ✓ The Compliance Manual lacks policies and procedures that are sufficiently well-developed to permit oversight, monitoring, and tracking of the origin of funds, the nature of the activities conducted, and the levels of transactions carried out by the exchangers. As a result, the policies in the Compliance Manual do not satisfy the requirements established in Act 8204. Such policies must focus on oversight tools and guidelines that allow activity related to money laundering to be detected in a timely manner.
 - ✓ The procedure for notifying the Superintendencia of suspicious transactions found during the analysis of unusual transactions. In this regard, it is necessary to take into account the provisions of Article 22 of Order SUGEF 12-10, "Rules for compliance with Act 8204."
- i) *Functions, responsibilities, and obligations of the Compliance Committee.*
- ✓ The requestor indicates that the Compliance Committee will include "an executive of the company." Pursuant to Article 32 of Order SUGEF 12-10, this must be "a high-level executive in the operational area of the company subject to compliance monitoring." Therefore, the appropriate change must be made.
- k) *Procedure for submitting reports to judges of the Republic in connection with investigations and trials for offenses defined in Act 8204, within the time frame ordered by the respective judge.*
- l) *Procedures for responding to requests from authorities having jurisdiction, for confiscation, seizure, or some other provisional measure pertaining to the funds used for or related to the commission of the offenses in Act 8204, within the time frame required by the respective authorities.*
- ✓ Only policies have been sent; therefore, procedures must be provided.



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- ✓ The procedure for delivery to the authorities having jurisdiction within the required time frame; this includes obtaining the records of seizure of documents to back the party delivering the documents and the party receiving them.
- ✓ The official or department that must keep a photocopy of the documents provided, or a photocopy of the original documents if certified copies are provided.

Other aspects of the compliance manual that must be changed include the following:

- a) *Policies and procedures for properly identifying the customer (the natural person or legal entity which directly performs the transaction, as well as any person or entity for the benefit of which the transaction is performed), as well as the origin of the customer's funds (even if the customer is a minor). In addition, policies, procedures, and processes to record and keep the supporting information and documentation, account records, official correspondence, and financial operations that allow transactions to be reconstructed or brought to a conclusion.*
- b) *Procedures for implementing the "Know Your Customer" policy.*
 - ✓ The information required in the "Know Your Customer" policy is contained in the [illegible]. However, this information must be listed in the Compliance Manual. In addition, [illegible] documentation that will be requested from natural persons [illegible] foreign companies regarding the origin of funds is not [illegible].
 - ✓ Point 4.1 of the Know Your Customer policy indicates: *"For purposes of this Manual, 'customer' is defined as: Any party that, by virtue of a contractual relationship with Liberty Reserve, S.A., may request the substitution of electronic currency for physical currency and [illegible], directly from the company."* In this regard, note that Article 7 of [illegible]GEF 12-10 establishes the definition of "customer."
 - ✓ [illegible] Know Your Customer policy states: *"(...) once the [illegible] documentation has been received, Liberty Reserve, S.A. will verify natural persons as well as [illegible] entities which wish to become its customers. This verification shall be performed by referring to the website www.alexa.com, as well as other reliable databases that are available for this purpose."* It is necessary to indicate the reliable databases that will be used to verify the exchangers. In addition, it is necessary to comply with the regulations in force, which require that the customer's individual identity be established at the beginning of the business relationship.
 - ✓ Include the methodology for verifying information about the addresses of customers (natural persons as well as legal entities) and noting this verification in the file. As the rules indicate, this verification may be performed using utility bills, visits to the address, records from a government entity, or any other means of fulfilling this requirement.
 - ✓ The policy for keeping documents indicates: *"Customers' identity records, account records, official correspondence, and financial operations will be kept for a minimum of five years (...)." Note that the five-year period is following the end of the company's relationship with the customer; therefore, the appropriate change must be made.*



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- ✓ Include the policies, procedures, and processes for keeping hard-copy or electronic backups (information and supporting documentation about transactions, account records, official correspondence, and financial operations, among others) which would allow transactions to be reconstructed, during the time period indicated in Act No. 8204 (throughout the course of a transaction and for at least five years following the date when the transaction is completed).
 - ✓ The policy for updating information about customers (both natural persons and legal entities) states: *“In the event that the Know Your Customer form needs to be updated, the Operations Department may complete the form, without the need for the customer’s signature.”* However, note that according to Article 16(c) of Act 8204, the information included in the Know Your Customer form must be signed by the customer. Therefore, this paragraph must be deleted.
- c) *Policies, procedures, and processes to detect, monitor, and report to the Compliance Officer and the supervisory bodies any suspicious transactions, such as transactions that do not follow the pattern of habitual transactions, and transactions that are not significant (according to the amount set by the financial institution) but which are periodic and lack any evident financial or legal basis. To this end, the so-called “Warning Signs” are attached as a reference document.*
- ✓ The policy to detect, monitor, and report any unusual and suspicious transactions to the Compliance Officer and the supervisory bodies states: *“If the Compliance Officer determines that a well-founded suspicion exists, he or she must discuss it verbally with the general manager and prepare an incident report, detailing the background information, analysis, and conclusions; this report is to be reviewed with the manager.”* According to Article 30(g) of the Rules for compliance with Act 8204, the Compliance Officer must *“prepare and report, with complete independence, suspicious transactions to the supervisory body having jurisdiction.”* Therefore, this paragraph must be corrected.
- f) *Ongoing training programs for all of the entity’s personnel (including new personnel), covering, among other things, the responsibilities established in Act 8204.*
- ✓ Include the scope or topics to be covered and the expected description of the person or organization that would be providing the training.
- m) *The code of ethics issued by the entity, in accordance with the provisions of Article 41 of the Regulations to Act 8204 (hereinafter “the Regulations”).*
- ✓ Point 27 (“Compliance with Laws”) of the Code of Ethics states: *“No employee or representative of the company may directly contact government employees or public authorities who are involved in enforcement, judicial, administrative, legislative, or financial matters, or any other matters of a governmental nature, with the aim that some action be taken or not taken, laws be created, or trade benefits be established in favor of the company.”* According to Article 30(a) of the Rules for Compliance with Act 8204, the Compliance Officer must: *“Be a direct link between the company subject to compliance monitoring and the respective supervisory body, and between the company and any other authority having jurisdiction.”* Therefore, the Compliance Officer must be excluded from the obligation indicated above.



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Consequently, a resolution issued by the requestor's Board of Directors must be requested; said resolution must indicate its commitment to approving, as soon as possible, the inclusion of these requirements in the Compliance Manual. These requirements must be implemented immediately. It is important to note that the changes that Liberty Reserve, S.A. must make to its Compliance Manual will be reviewed during on-site supervisory visits, so the manual need not be sent again. In addition, please bear in mind that Article 81 of Act 8204 establishes sanctions for companies subject to compliance monitoring which fail to comply with the requirements of said Act, the regulations thereto, and the rules in force.

Finally, the requestor must be informed that the comprehensive amendment to the Rules for compliance with Act 8204 was published in *La Gaceta* No. 248 of December 22, 2010. Therefore, the requestor must make the pertinent changes to the Compliance Manual.

In addition, because of the systematic, substantial transactions reported by the System to Capture, Verify, and Upload Data (SICVECA), notice was served on Messrs. Marco Vinicio Cubero Carro and Kelsin Varela Figueroa, both of whom are shareholders of Liberty Reserve, S.A., requesting that they provide justification for the transactions that were identified.

*[handwritten]
Requested by
OPES[IL]
in official letters
Sugef 2516-20 and
Sugef 2517-20*

Finally, we ask that you seek the following information from the requestor:

- a) In regard to agreements entered into with exchangers, a document enclosed with the official letter of February 9, 2010 indicates that some of the exchangers are inactive as of February 8, 2010. However, a review of the <https://www.libertyreserve.com/> site shows that the exchangers continue to offer to exchange Liberty Reserve currency (this is true of AsianaGold.com, MoneyCentralMarket.com, M-Gold.com, and MewahGold.com, among others). Therefore, the requestor must send a current list of the agreements Liberty Reserve has entered into with the exchangers that are active.
- b) In regard to affiliated businesses, the official letter of February 9, 2010 indicates that "(...) *we are in the process of identifying, grouping, selecting, and verifying our users who are engaged in commerce. We hope to have agreements and the entire database within a reasonable length of time. (...)*." In this regard, the requestor must be asked to provide this information.