



**GUIDANCE NOTES ON THE PREVENTION AND DETECTION OF  
MONEY LAUNDERING AND TERRORIST FINANCING  
IN THE CAYMAN ISLANDS**

**PART VI**

**MUTUAL FUNDS AND  
MUTUAL FUNDS ADMINISTRATORS  
SECTOR SPECIFIC AML/CFT GUIDANCE NOTES**

The purpose of Part VI of the Guidance Notes is to deal with AML / CFT matters pertaining to Mutual Funds (“MFs”) and Mutual Fund Administrators (“MFAs”) that require more explanation or are more complex issues than are dealt with in the general body of these Guidance Notes. This section must be read in conjunction with Part I and Part II of the Guidance Notes and the Appendices. MFs and MFAs may also find Part VIII of these Guidance Notes to be of some relevance.

**SECTION 1**  
**MUTUAL FUNDS AND MUTUAL FUND ADMINISTRATORS**

**A. OVERVIEW**

1. The Mutual Funds Law (2015 Revision) (the "MFL") gives the Authority responsibility for regulating certain categories of Mutual Funds (defined below) operating in and from the Cayman Islands, as well as Mutual Fund Administrators (defined below).
2. The Authority regulates Mutual Funds and Mutual Fund Administrators in accordance with:
  - (1) the laws and regulations applicable to all regulated entities and those specifically governing this sector, namely, the MFL; the Mutual Funds (Annual Returns) Regulations; the Retail Mutual Funds (Japan) Regulations; and the Mutual Fund Administrators Licence (Applications) Regulations;
  - (2) the relevant rules, guidance, policies and procedures issued by the Authority from time to time; and
  - (3) relevant international standards set by international bodies such as, but not limited to, the International Organization of Securities Commissions ("IOSCO") and the Offshore Group of Collective Investment Scheme Supervisors ("OGCISS").
3. The definition of a Mutual fund, as established in the MFL, can be summarised as follows: any company, trust or partnership either incorporated or established in the Cayman Islands, or if outside the Cayman Islands, managed from the Cayman Islands, which issues equity interests redeemable or purchasable at the option of the investor, the purpose of which is the pooling of investors' funds with the aim of spreading investment risk and enabling investors to receive profits or gains from investments.
4. Note that funds commonly referred to as hedge funds fall within the definition of a Mutual Fund and are thus covered by the MFL.
5. The Cayman Islands has company, trust, partnership and related laws that allow a high degree of flexibility for establishing Mutual Funds. The four vehicles commonly used for operating Mutual Funds are the exempted company, the segregated portfolio company, the unit trust and the exempted limited partnership.
6. A Mutual Fund Administrator is a person who conducts mutual fund administration as defined in the MFL; that is: a person managing (including controlling all or substantially all of its assets) or administering a Mutual Fund; a person providing the principal office of a Mutual Fund in the Cayman Islands; or providing an operator to the Mutual Fund as defined in section 2 of the MFL (a trustee of a unit trust, a general partner of a partnership or a director of a company).

## **B. SCOPE**

1. The sector specific guidance contained in this section is applicable to regulated Mutual Funds and Mutual Fund Administrators, separated accordingly where applicable.

## **C. MONEY LAUNDERING AND TERRORIST FINANCING RISKS**

1. As is the case with most financial products, Mutual Funds carry a certain degree of ML/TF risks.
2. Listed below are some, but not all, of these relevant risks.
  - (1) **Country Risk** – having investors located in multiple international locations can increase the risk of money laundering and terrorist financing. Mutual Funds and Mutual Fund Administrators should be especially careful when dealing with investors who are politically exposed persons (“PEPs”) of a foreign jurisdiction or those from a country on a sanctions list.
  - (2) **Investor Profile** – in addition to the country of domicile of investors, the types of individuals/entities that make up the investor base can also increase the risk of money laundering and terrorist financing. All things equal, institutional investors from large financial institutions that are regulated and/or listed on a stock exchange could be considered less risky than investors in the form of trusts, charities or high net worth individuals for example.
  - (3) **Source of Funds** – Mutual Funds with lower minimum investment thresholds pose a greater risk of money laundering, especially if those funds are not coming from a regulated financial institution. Mutual Fund Administrators and Operators must remain cognizant of, and have controls in place surrounding, subscription and redemption activity in Mutual Funds, in the same way bankers must do so for bank account deposits and withdrawals.
  - (4) **Redemption Terms** – persons attempting to partake in money laundering need the ability to move funds out of the Mutual Fund in order to effectively layer transactions. Some Mutual Funds have liquidity structures with limited or no lock-up periods and/or redemption restrictions.

## **D. RISK-BASED APPROACH** (refer also to Section 3 of Part II)

1. Low and high risk indicators including the ML/TF risks outlined in section C above and the ML/TF warning signs outlined in section I below should be considered when the Mutual Fund and/or Mutual Fund Administrator is conducting risk assessments.
2. FSPs should be aware of, and take into account, additional risk factors or risk variables that may be introduced where services, functions or activities of the FSP itself or the FSPs clients are outsourced or delegated, particularly so if

the service provider is not subject to adequate AML/CFT laws and measures and / or is not adequately supervised.

3. One risk factor set out in Part II Section 3 that is of particular relevance (to mutual funds and (perhaps to a lesser degree) fund administrators is the non-face-to-face basis for subscriptions, redemptions and transfers. A possible mitigating measure, which in turn requires robust systems and controls, is the use of reputable and regulated Eligible Introducers.
4. Other risk factors or risk variables to consider may include:
  - (1) A history of frequent and / or unexplained changes in service providers; and
  - (2) A client, or principals of a client, that is or has been the subject of criminal / civil or regulatory proceedings for crime, corruption, misuse of public funds or known to associate with such persons
5. Risk Assessments should take place as a client or investor is on-boarded and be reviewed and changed if necessary during periodic reviews of the clients and investors as discussed in the Ongoing Monitoring section below. The methodology used by the entity to assess the risk should be based on the ML/TF risks posed, including the factors discussed above. Clients and investors that are risk classified as low (or the equivalent) may be subject to simplified CDD procedures. However, entities must be aware that their risk classification of a Client/Investor being low-risk is only valid if the finding is consistent with the findings of the national risk assessment or the Supervisory Authority, whichever is most recently issued. Clients and investors that are risk classified as medium risk (or the equivalent) may be subject to normal CDD procedures. Clients and investors risk classified as high risk must be subject to enhanced CDD procedures.
6. On-Going Monitoring should take place to ensure that documents, data, information collected during the various due diligence procedures on the clients or investors are kept up-to-date and relevant. Entities should ensure that the clients or investors are periodically screened against the vigilance databases/sanction lists and periodic reviews should also be conducted on the clients or investors based on their risk rating.

**E. APPLICANT FOR BUSINESS** (refer also to Part II)

*Who should be treated as the Applicant for Business?*

1. **The applicant for business may be any one of the following:**

Eg.	FSP	Applicant for Business
1.	The Mutual Fund.	(1) Investors should be treated as such for the purposes of the Guidance Notes.

2.	FSP incorporating a company/setting up a limited partnership/unit trust as part of a Mutual Fund structure (including acting as investor, shareholder and/or providing initial registered office).	<ul style="list-style-type: none"> <li>(1) Promoters (as defined in the MFL).</li> <li>(2) Where the mutual fund is a unit trust, the trustees; or</li> <li>(3) Where the mutual fund is a limited partnership, the general partner; or</li> <li>(4) Where the mutual fund is a corporation, the directors (see the section on Company Formation and Management).</li> </ul>
3.	<p>FSP providing registered office for Mutual Fund/general or limited partner (other than at the date of incorporation).</p> <p>FSP providing a principal office for a Mutual Fund Administrator.</p>	<ul style="list-style-type: none"> <li>(1) The Mutual Fund.</li> <li>(2) The Mutual Fund Administrator</li> </ul>
4.	Mutual Fund Administrator.	<ul style="list-style-type: none"> <li>(1) The Mutual Fund (and the relevant Operators thereof).</li> <li>(2) When the Mutual Fund for which documentary evidence should be obtained is a unit trust or a limited partnership, it will usually be sufficient to obtain evidence of the identity of the Trustee or the controlling General Partner.</li> <li>(3) Given the special circumstances of mutual funds, it is recommended as good practice that a Mutual Fund Administrator should not rely on the Mutual Fund falling into the specified scenarios in which simplified CDD would apply by virtue of it being subject to the Regulations. However, the Administrator may be satisfied that the Mutual Fund, if not itself carrying out client identification or record keeping, has in place appropriate safeguards to ensure that its obligations under the Regulations are met.</li> <li>(4) Promoters: Whilst promoters are not to be treated as applicants for</li> </ul>

		business for the purposes of these Guidance Notes, it is industry best practice to ascertain the identity and background of any promoter relied upon.
	FSP otherwise issuing and administering subscriptions/redemptions.	(1) The Mutual Fund.

**F. CUSTOMER DUE DILIGENCE** (refer also to Section 4 of Part II)

*When must the identity be verified?*

1. The Regulations provide that there should be procedures in place requiring, as soon as reasonably practicable after contact is first made with an applicant for business, either satisfactory evidence of the applicant's identity or that steps are taken which will produce satisfactory evidence of identity.
2. The time span in which satisfactory evidence has to be obtained depends on the particular circumstances and the practicalities of obtaining evidence before commitments are entered into between parties and before money passes.
3. In the Mutual Fund context, situations may arise in which satisfactory verification of identity procedures have not been completed prior to the receipt of subscription funds or have not been updated prior to the receipt of redemption settlement requests. Whether or not it is appropriate to transfer funds to a brokerage or similar account in the name of the Mutual Fund may depend on a number of factors, including the nature of the investment. However it must only be considered for investors that are classified as low-risk. It should also be noted that in these situations, Mutual Funds and Mutual Fund Administrators should ensure that they have in place tightly controlled procedures to ensure that shares/units/interests are not applied to investors and that redemption proceeds are not settled without senior management approval, the basis for such approval to be recorded and such records retained.

*How might identification of existing clients be carried out?*

4. Refer to Section 4 (Customer Due Diligence) of Part II of the Guidance Notes.
5. If, after having conducted a risk assessment, verification procedures or identification of an investor have not been completed prior to the date on which redemption is due to take place, the Mutual Fund should use the opportunity of redemption to seek satisfactory evidence of identity. Payment of the redemption proceeds should be made only to the investor and not to a third party and only when the outstanding due diligence documentation has been collected and verified. If payment is to be made to or from an account in the name of the investor with a regulated bank in the Cayman Islands or in

an AMLSG List country and the criteria set out Section 4 of Part II of the Guidance Notes are adhered to, that will be sufficient evidence of identity.

*Particular Issues on Verification of Identity of Investors.*

*One-off transactions.*

6. For the purpose of the Guidance Notes a subscription to a Mutual Fund should not be treated as a one-off transaction (for which see section 4 of Part II of the Guidance Notes).

*If the investor is a fund domiciled outside an AMLSG List Country but is administered in an AMLSG List Country.*

7. In such a case, the investor may fall within one of the specified scenarios in which simplified CDD would apply.
8. Evidence may also be satisfactory if the investor's administrator:
  - (1) is subject to the Anti-Money Laundering regime of the AMLSG List country; and
  - (2) confirms in writing that it has obtained and maintains client verification evidence in accordance with the procedures of the AMLSG List Country.

*Payment on an Account in a Bank  
In the Cayman Islands or an AMLSG List Country*

9. When redemption proceeds are paid into an account held in the name of an investor at a bank in the Cayman Islands or a bank regulated in an AMLSG List country, evidence identifying the branch or office of the bank and verifying that the account is in the name of the investor is satisfactory evidence of the investors identity and it will generally be unnecessary to obtain other documentary evidence.
10. See Section 4 of Part II of these Guidance Notes.

*Corporate Group Introduction*

11. It will not be necessary for identity to be re-verified or records duplicated if the identity of an investor has been verified by another entity within a group in a manner compatible with the Regulations and provided that written confirmation is obtained that the identification records will upon request be provided.
12. This is so even in circumstances when neither the investor nor the Bank from which he sends funds or investment is located in an AMLSG List country.

**G. INTERNAL CONTROLS AND ONGOING MONITORING** (refer also to Part II)

1. Regulated Mutual Funds and Mutual Fund Administrators must have internal reporting procedures in place to (1) identify and report suspicious activity, (2) monitor and ensure internal compliance with laws relating to money laundering, and (3) test the AML/CFT system consistent with the Regulations and the Guidance Notes (the "Procedures").
2. Both Mutual Funds and their Mutual Fund Administrators subject to the Regulations have separate obligations to maintain and implement such Procedures in respect of their relevant financial business.
3. Although ultimate responsibility for maintaining and implementing satisfactory Procedures remains with the Mutual Funds and Mutual Fund Administrators, the obligations may be met by delegating or outsourcing those functions.
4. A Fund can meet its obligations in relation to the Procedures in one of four ways:
  - (1) It can implement Procedures directly.
  - (2) Where a Fund has no staff in the Islands and the administration of subscriptions and redemptions is done by a person subject to the anti-money laundering regime of the Cayman Islands or a 5(2)(a) country, the Fund will be regarded by the Monetary Authority as being compliant with the Regulations and the Guidance Notes in relation to the Procedures if the Fund's reliance on such a person is acknowledged in an appropriate agreement (e.g., an administration or registrar and transfer agency agreement) and if the person administering subscriptions and redemptions does so in compliance with the applicable Procedures of such jurisdiction.
  - (3) Where a Fund has delegated any of the Procedures to a person subject to the anti-money laundering regime of the Cayman Islands or an AMLSG List country, consistent with the requirements of section 4 of Part II of these Guidance Notes, where applicable, the Fund will be regarded by the Monetary Authority as being compliant with the Regulations and the Guidance Notes with respect to the Procedures if the delegate complies with the applicable Procedures of such jurisdiction.
  - (4) A Fund may also delegate any or all of its obligations with respect to the maintenance of Procedures to a suitable third party or parties, whether within or outside the Cayman Islands, provided that such appointment is consistent with the requirements of Section 4 of Part II of these Guidance Notes, where applicable.
5. It should be noted that all Funds must appoint a MLRO and DMLRO as outlined in Regulation 33 of the AMLRs.
6. A Mutual Fund Administrator may delegate any of the Procedures to a regulated person in the Cayman Islands or a person in an AMLSG List country that is subject to the AML/CFT regime of that country, consistent with the



requirements of sections 4 and 10 of Part II of these Guidance Notes, where applicable.

7. The Mutual Fund Administrator will be regarded by the Monetary Authority as being compliant with the Regulations and the Guidance Notes with respect to the Procedures if the delegate complies with the Procedures of such jurisdiction.
8. A Mutual Fund Administrator may also delegate any or all of its obligations with respect to the maintenance of Procedures to a suitable third party or parties, whether within or outside the Cayman Islands, provided that such appointment is consistent with the requirements of Sections 4 and 10 of Part II of the Guidance Notes.
9. The operators of the Mutual Fund or Mutual Fund Administrator should document, either as a board resolution or otherwise, the manner in which the entity has met its obligation to maintain Procedures.

#### **H. RECORD KEEPING** (refer also to Section 8 and 11 of Part II)

*What specific records should be kept and where?*

1. Refer to Sections 54 and 55 of the Companies Law (2016 Revision)
2. It may be impractical for a regulated Fund itself to maintain records but it must ensure that all appropriate records are maintained on its behalf.
3. Mutual Fund Administrators must ensure that they have client verification evidence appropriate to the administration of Mutual Funds and, if the function is delegated to them, must maintain records on behalf of the Mutual Fund for the requisite period.

*When procedures required by the Regulations may be maintained by a party not based in the Cayman Islands.*

4. Maintenance by a person or institution regulated in an AMLSG List country of all records and compliance with the procedures of such an AMLSG List country will be regarded as compliance with the Regulations and the Guidance Notes, subject to compliance with the provisions of Section 5 of Part II of the Guidance Notes.

*When may a successor Mutual Fund Administrator rely on the client verification evidence obtained by its predecessor?*

5. Where a successor firm is acquiring administration of an existing Mutual Fund, the successor must ensure that the necessary due diligence has been performed prior to performing the administration.
6. It may be possible to rely upon the evidence of identity obtained by a predecessor Mutual Fund Administrator provided that the original files, or certified copies of the original files, are transferred to the successor Mutual

Fund Administrator and the successor firm has assessed the quality of the evidence on investor identity.

7. Where insufficient evidence exists, it may be appropriate to supplement with additional evidence to meet the standards required by these Guidance Notes.
8. At no time would it be appropriate to rely upon an eligible introducer letter as a method for the client verification evidence obtained by its predecessor.

## **I. MONEY LAUNDERING/TERRORIST FINANCING WARNING SIGNS**

1. In addition to the risk factors in section 3 of Part II and the warning signs set out in Appendix D of the Guidance Notes, risk factors and ML/TF warning signs to which Mutual Funds and/or Mutual Fund Administrators must have regard to in order to satisfactorily assess the ML/FT risks pertaining to a particular business relationship or transaction include:
  - (1) When an investor is more concerned about the subscription and redemption terms of the Mutual Fund than with other information related to the investment strategy, service providers, performance history of the investment manager, etc.
  - (2) Lack of concern by an investor regarding losses or (large) fees or offering to pay extraordinary fees for early redemption;
  - (3) Sudden and unexplained subscriptions and redemptions;
  - (4) Quick purchase and redemption of units despite penalties;
  - (5) Requests to pay redemptions proceeds to a third (*unrelated*) party;
  - (6) A fund, or principals of a fund (i.e. a client of a mutual fund administrator) that exhibits unusual concern with compliance with AML/CFT reporting requirements or other( AML/CFT) policies and procedures; and
  - (7) When a promoter/manager attempts to launch a new Mutual Fund with large amounts of seed capital from one source, either from an internal or external source. (The source of funds must be properly verified.)