APPENDIX 1

Cayman Islands Monetary Authority

SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT

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

General Comments on the Guidance Notes ("GN")			
Section	**Industry comment**	**Authority's response**	**Consequent amendments to the draft GN**
General Observations			
Acronyms	Suggestion to include the acronym **AMLSG** in the Glossary & Acronyms section which will also provide a quick reference point for readers	Noted "AMLSG" will be included in the Glossary & Acronyms section	Amended

Consultation Period	The period provided for private sector consultation of the Draft GNs is totally inadequate and is in breach of sections 4(1) and 6 of the Monetary Authority Law (2016 Revision) (the "**MAL**"). Section 4(3) is not applicable as the amended GNs are not "*urgently required for the protection of members of the public".* Furthermore, two of the key conditions under section 4(1) (4(1)(iii) and (iv)) have also not been addressed. Claims that the Authority has failed to meet its main considerations under section 6(3) of the MAL including the elements under (a), (c), (d) and (f). Request that CIMA to remain open to a more comprehensive and realistic consultation exercise, with appropriate private sector industry specific representation, early in 2018and that the Authority take a practical approach to assessing its licensees against the draft GN as they currently stand.	The Authority's view is that the issuing of the new AML/CFT Guidance Notes is urgently required for the protection of members of the public. We are also of the view that in all respects, the Authority has acted appropriately and in accordance with the requirements of the law.	None

Transitional Provisions	The AMLRs introduced new obligations and thus remediation will be required. As no transitional provisions were included in the AMLRs the result must be that many firms are currently noncompliant. CIIPA therefore recommends a section be added to the GN to advise how firms should address remediation, similar to what was included for the retrospective due diligence requirements and CIMA's approach to enforcement in those cases. This will assist accountants in business and auditors that may become aware of non-compliance with the AMLRs prior to remediation who may have duties to report non-compliance under the regulatory laws and the Code of Ethics. It will also avoid a position where the majority of the financial firms in the Cayman Islands are considered non-compliant. Another suggestion was in relation to a grandfathering provision, where FSPs can take a view on a risk-based	The AMLRS are already in force, and have been since October 2, 2017. The AML/CFT GNs merely provide for what is already the law. Therefore, it is legally impermissible for the Authority to declare that it will allow a formal "transition period" for compliance with the requirements of the AMLRs and/or the AML/CFT GNs. This is particularly so because the section 136(5) & 137(4) of the POCL provide that in deciding whether a person committed an offence under these sections the court must consider whether the person followed any relevant guidance which was at the time concerned- (a) issued by the Monetary Authority; and (b) published in a manner approved by the Cabinet as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it. The AMLRs themselves, also provide that [56(1)]- a person who contravenes these regulations commits an	None

	approach as to whether the updating of CDD for existing lower risk files is necessary	offence and is liable- (a) on summary conviction, to a fine of $5,000; or (b) on conviction on indictment, to a fine and to imprisonment for 2 years. [Reg. 56(2)] **-** In determining whether a person has complied with any of these regulations a court - (a) shall take into account any relevant supervisory or regulatory guidance which applies to that person; and (b) may take into account any relevant guidance issued by a body in the islands that regulates … that person. [Reg. 56(4)]- In determining whether to exercise any of its enforcement powers for breach of these regulations, the Supervisory Authority (in this case CIMA) shall take into account (a) these regulations; and (b) any supervisory or regulatory guidance. [ie. any compliance or non-compliance with either of these]. In this context "supervisory	

		or regulatory guidance" means guidance issued, adopted or approved by the Authority; or contained in regulations; or a code of practice issued under the POCL. In that regard, it is imperative therefore, that the Authority provides, without delay, the requisite guidance to the industry on what the requirements of the AMLRs are, so that all stakeholders will be better aware of what their obligations are (ie how to comply with the AMLRs) and what the Authority's expectations are in respect of them. Further, and for the reasons outlined above, the Authority in legally incapable of inserting any "grandfathering provisions" into the AML/CFT GNs.	
Certainty in requirements and basis for enforcement	There appears to be a major shift in the enforcement approach and whilst the pending introduction of administrative fines is a welcome and more proportional approach, it is	The Proceeds of Crime Law and the AMLRs have provisions that specifically relate to how the supervisory or regulatory guidance is to be taken into account in respect of criminal and	None

	strongly recommended that it be made clear that supervisory guidance cannot be the basis or grounds for enforcement, only for the determination whether to enforce the provisions of the AMLRs. In the event that binding provisions are required (in addition to those in the AMLRs) then Rules rather than the GN should be used as the binding provisions. This is important for such provisions to be unilaterally enforceable by the Supervisor and for certainty regarding regulatory provisions and risk for CIIPA members	enforcement matters.	
RBA	The adoption of a true RBA should negate the need for FSPs to require a set of GN at all.	Adoption of the RBA does not negate the need for guidance. The GN interprets, explains and assists FSPs in complying with the AMLRs and implementation of the RBA.	None
Reference to the AMLRs	Some parts of the GN reference the AMLRs and it would be better to cite the provisions of AMLRs and thereby make clear that these are mandatory requirements	Reference to the AMLRs implies that the specific provisions are mandatory. However, the Authority notes that the reference to relevant regulations would be beneficial to the FSPs to	None

		better understand the provisions. As such, CIMA will update the references in due course.	
Guidance to unregulated sectors/entities	There is currently no guidance for: - Unregulated funds - Independent directors - Foundations Given that there are a variety of structured finance vehicles and types of business, a separate sector specific section should be developed for this area	CIMA notes the need for guidance on the unregulated sectors. Consideration will be given to the development of additional guidance to some of the un-supervised entities in due course. For the issuance of these new guidance notes to the un-supervised sectors working groups with experts from relevant sectors may also need to be established.	None

Part I of the GN			
Section	**Industry comment**	**Authority's response**	**Consequent amendments to the draft GN**
General Observations			
Use of word "Should"	The use of the word "should" needs an explanation, not least in the Forward which states "guidelines that should be adopted".	The use of word "should" is not uncommon in the Authority's SOGs.	None

Section 1			
para B 2 on page 5 These Guidance Notes are designed to assist FSPs in complying with the AMLRs. They are intended to clarify, explain and in some instances amplify the general requirements of the AMLRs	It is important and in line with regulatory principles to clarify what is meant by "amplify". Is that to "enhance" or extend or to further explain? Suggest to reword as follows: The Guidance Notes are designed to assist FSPs in complying with the AMLRs. They are intended to clarify, explain and support(i) the general requirements of the AMLRs; (ii) a common understanding of what an RBA involves; and (iii) outline high-level principles in applying the RBA".	The word "amplify" will be deleted to avoid confusion.	Amended
Section 2			
L4 page 14 It is not necessary that the original offence from which the proceeds stem was committed in the Cayman Islands if the conduct would also constitute an indictable offence had it taken place within the Islands, that is- an offence, which is sufficiently serious to be tried in the Grand Court. This is known as the concept of dual criminality.	Incorrect, any criminal offence would be relevant. However, it has to be unlawful in the jurisdiction in which it was committed.	Noted. This needs to be amended to reflect the definition provided in the Law and AMLRs and remove reference to the Grand Court.	Amended
M2 Page 16	This paragraph refers to	For clarity, this paragraph will	

The Law provides that a person making a report does not put himself at risk of prosecution by continuing the relevant action (e.g. immediate execution of a transaction or a mandate), before receiving consent to do so from the authorities. Whether or not it will be appropriate for the FSP to stop the relevant transaction must depend on the circumstances.	receiving consent from the FRA. The Cayman Islands do not have a consent regime with respect to continuing transactions after the filing of a SAR (e.g. unlike the UK)	be amended to reflect the fact that the entities making a disclosure shall take into account the circumstances and risks in determining whether to continue the relevant action unless they receive any particular instruction(s) from the FRA such as instructions to stop the transaction, freeze the funds or terminate the business relationship.	
N 4 Page 17 These Guidance Notes are also intended to assist FSPs in applying national AML/CFT/APF measures, and in particular, in detecting and reporting suspicious activities. They represent Supervisory Authorities' minimum expected standards as it relates to the interpretation and application of national AML/CFT measures, and although they are described as guidance, it is expected that they will be studiously complied with by FSPs.	Requests clarity "….minimum expected standards…." "….studiously complied with…."	For clarity the wording will be amended	Amended

Part II of the GN			
Section	**Industry comment**	**Authority's response**	**Consequent amendments to the draft GN**

Section 2			
C 5 Page 21 an AMLCO must be a person who is fit …	Typo "an" is in lower case	Noted, will be amended to rectify the typo.	Amended
C 5(1) Page 21 "has sufficient skills and experience"	: has sufficient skills and experience "and qualifications"	The GN state that AMLCO should be fit and proper to assume the role and be someone who has sufficient skills and experience. The current wording is adequate to indicate that the person should be appropriately qualified and capable of performing the role of the AMLCO.	None
C 5 (2) Page 21 "reports directly to the Board of Directors ("Board")"	Suggested amendments Reports directly to the Board of Directors "or is a member of the Board of Directors"	Irrespective of whether the AMLCO is a board member or not, he/she should report to the board.	None
	Refers to Board of directors. This does not apply to RFBs where they are not companies, therefore should read "board of directors or equivalent".	Noted, will be amended to reflect the recommended wording	Amended
C6, C7, C8	Typos Sentences should start with "A" not "An"	Use of "An" is appropriate	None
C6(3) Page 22 An FSP may demonstrate clearly apportioned roles for countering ML and	Please stipulate whether all FSP's should maintain declined business logs or	In case of declined business, logs should be maintained by (all) FSPs.	None

the TF, where the AMLCO……. Maintains various logs, as necessary, which should include logs with respect to declined business, PEPs, and ……	only specified types of FSPs		
C 8 Page 22 An FSP may designate a staff member to be an AMLCO or outsource[1] the compliance function.	Recommendation to amend An FSP may designate a staff member to be an AMLCO or outsource the Compliance function "if permitted by the FSP's internal policies"	Suggested wording not necessary. With respect to further guidance on outsourcing, FSPs should refer to section 10 of Part II of the GN. FSPs may also refer to the SOG on outsourcing issued by CIMA.	None
D 2 Page 22 FSPs shall consider conducting a gap analysis between their group-wide AML/CFT programmes and the Cayman Islands AML/CFT legislative and regulatory requirements to ensure that they, at a minimum, comply with the applicable Cayman Islands requirements	For clarity and consistency with D. 4-6, suggests to add wording "<u>In relation to branches and majority owned subsidiaries" at the beginning of this paragraph</u>	This paragraph will be amended to align with AMLRs.	Amended
D6 Page 23 The policies and procedures designed to mitigate assessed ML/TF risks should be appropriate and proportionate to these risks and should be designed to provide an effective level of mitigation	….should be appropriate and proportionate…." The wording of this paragraph seems to imply that as long as the Cayman FSP is managing ML/TF risks then they do not necessarily need to comply with Cayman ML/TF measures. Requests for additional clarification on this matter.	No such implication is identified. This paragraph is referring to the mitigation measures.	None

[1] Where a FSP has outsourced the AMLCO function, the FSP shall refer to the Statement of Guidance on the outsourcing issued by the Monetary Authority, if applicable.

Section 3			
Risk classification of non-face to face /overseas customers	The majority of Cayman Islands' financial services business is with overseas customers, referred by foreign firms and companies. The Draft GNs need to reflect this. Classifying customers who are overseas or who are not present (i.e. non face-to-face) for identification purposes as high-risk would significantly alter and improperly skew the risk profile of entities, particularly given the nature of the Cayman financial services and funds sector whose business comes largely from Asia and far east Changes are suggested in the following paragraphs Part II sec 3 C 10 Part II sec 4 B 18 Part II Section 4 G. 1 Part IV Section E 13 Part V H8 Part VI D3	Response is provided in the respective paragraphs	N/A
C 9 Page 27 As stated in paragraph 8 above, examples of risk factors for different risk categories are provided below. These examples of risk factors/indicators are not intended to be comprehensive, and	Guidance on the term "helpful indicators" It is noted that these are 'factors' but many members are likely concerned about	The factors provided merely are examples. FSPs should establish their own factors and methods appropriate to the nature, scale and complexity of their business	None

although they are considered to be helpful indicators, they may not be relevant in all circumstances	the Risk Assessment and RBA which is relatively subjective and so clarity on whether a specific method or list of factors must be considered is important	and assign the overall risk rating.	
C para 10 Page 27 <u>High-Risk Classification Factors</u> When assessing the ML/TF risks relating to types of customers, countries or geographic areas, and particular products, services, transactions or delivery channels, examples of potentially high-risk situations (in addition to those set out in Part VI of the AMLRs) include the following……	Comments in relation to non-face to face customers as high-risk factors Suggested wording: When assessing ……. high-risk situations (in addition to those set out in Part VI of the AMLRs)<u>,might</u>, <u>depending on the nature of the business (e.g. retail banking), include the following</u> (1) (a) The business relationship is conducted in unusual circumstances (e.g. significant unexplained geographic distance between the FSP and the applicant/customer), <u>although this would not be the case for non-retail, institutional or offshore financial services in the ordinary course</u>. (b) <u>Save for offshore, non-retail or institutional business</u>, non-resident applicants/customers.	These are examples of potential risk factors, which FSPs could consider in their risk assessments. The list is not intended to be exhaustive. The said risk factor (non-face to face) could be one of the risk factors but not the only risk factor in determining the overall risk rating.	None

	(c) Legal persons or arrangements that are personal asset-holding vehicles unless they are administered by regulated applicants or trustees." (d) Companies that have unregulated nominee shareholders or shares in bearer form (3) (b) Save for offshore, non-retail or institutional business, non-face to face business relationships or transactions.		
C10 (3)(e) Page 28 Other activities, products or services including private banking, trade finance, payable through accounts, trust and asset management services, prepaid cards, remittance, lending activities (loans secured by cash collateral) and special use or concentration accounts	"Asset management services" is listed under the examples for high-risk factors. In most cases, asset management is a highly regulated activity. Suggest that a high-risk classification should only be relevant where the said activity is an unregulated service conducted by a customer not based in an equivalent country.	There is a potential for misuse of asset management services for ML/TF purposes. Therefore the Authority considers this a high-risk factor.	None
C 11(1)(a) Page 28 Low Risk Classification Factors Customer/Client risk factors: An applicant/customer that satisfies the requirements under regulation 22 (d) of the AMLRs	Refers to examples but does this mean that only entities included in Regulation 22(d) can be considered low risk or can this be used as a factor or example?	These are merely examples.	None

C 11(2)(c) page 28 Low Risk Classification Factors Product, service, transaction or delivery channel risk factors: (c)*Financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes*.	The meaning is not ascertainable, very ambiguous and is unclear what product or service is meant to be captured Suggestion Either redraft so as to convey the intended meaning or if this is not known delete the paragraph.	An explanation with some examples will be included	Amended
C 11 page 28	Recommendation that general insurance policies be added to the low risk classification factors	Examples of low risk factors in relation to general insurance business are provided in Part V of the GN	None
D2 Page 29 FSPs are encouraged to establish their risk tolerance. Such establishment should be done……	Clarity and guidance on "FSPs are encouraged…."	This will be amend to replace "are encouraged " with "should"	Amended
D8 Page 30 Some of the risk mitigation measures that FSPs may consider include…	Ambiguous and needs clarity " ….measures that FSPs may consider…"	These are merely examples	None
G 3 Page 32 …….could result in FSPs not complying with the ALMRs	should be AMLRs and not ALMRs	This will be amended	Amended
G Page 32	Incorrect numbering	This will be amended	Amended
Section 4			

A 2,8, 11 Page 34 FSPs shall conduct customer due diligence ("CDD") which comprises of identification and verification of customers including beneficial owners, understanding the intended nature and purpose of the relationship, and ownership and control structure of the customer FSPs shall identify and verify the applicant's beneficial owner(s) to ensure that the FSP understands who the ultimate beneficial owner is FSPs shall conduct CDD on the authorised person(s) using the same standards that are applicable to an applicant/customer	Claims that the government working group recommended that for Beneficial owners focus should be on identification and not verification Clarification required as to whether both identification and verification are required for the beneficial owners	The AMLRs requires both identification and verification of beneficial owners	None
A 16(1)(b) Page 36 Identify the applicant and verify its identity. The type of information that would normally be needed to perform this function would be….. The powers that regulate and bind the legal person or arrangement (e.g. the memorandum and articles of association of a company), as well as the names of the relevant persons having a senior management position in the legal person or arrangement (e.g. directors, senior managing directors in a company, trustee(s) of a trust).	Obtaining constitutional documents is not always possible and even where it is, imposes a burden on an FSP to interpret the effect of documents governed by a foreign law or in a foreign language. It is also contradicted by s.B.44, which only requires that "consideration" be given to obtaining such documents Suggestion to add the following wording at the beginning of the paragraph "Where relevant, obtain	Substitute the word "power" with "constitutional documents". B 44 was amended and included as B 43 (10) and (11), so as to allow for taking a RBA similar to other identification information requirements	Amended

	copies of the"		
A 16(1) Page 36 Identify the applicant and verify its identity. The type of information that would normally be needed to perform this function would be…..	Requests clarity …….”information that would normally be needed”.....	The referenced documents in the paragraph are usually required	None
B 14 Page 39 In circumstances in which the relationship is discontinued, funds held to the order of the applicant should be returned only to the source from which they came and not to a third party Also applicable to Part IV section 1 Paragraph 14	Should be amended to reflect the fact that where the relationship is being discontinued for suspicious purposes, could result in tipping off.	In general, FSPs should pay caution and take steps to avoid tipping off, not only in this particular instance. However, this paragraph will be amended to include exemptions with some examples of cases i.e., when funds could be returned to third parties.	None
B 18 Page 40 In the case of non-resident applicants, identification documents of the same sort which bear a photograph and are pre-signed by the applicant should normally be obtained. This evidence should, where possible, be supplemented by a reference from a respected professional (e.g. Attorney) with which the customer maintains a current relationship or other appropriate reference. FSPs should be aware that other identifying information when practicable, for example, a government issued identification number could be of material assistance in an audit trail. In any event, the true name, current address or place of business/employment, date of birth and nationality of a prospective customer	Suggested amendment …This evidence ~~should, where possible~~ might, depending on the nature of the business (e.g. retail banking), be supplemented by a reference from a respected professional (e.g. Attorney) with which the customer maintains a current relationship or other appropriate reference If the wording “some sort” refers personal identification cards then this should be referred to as an example. Considering the ever increasing digitalised era,	The Authority does not fully agree with suggested amendment. However, an alternative amendment is proposed to address some of the issues raised. In the case of non-resident applicants, original, certified or electronic identification documents of the same sort set out in 17 above which bear a photograph and are pre-signed by the applicant should normally be obtained. On a risk based approach, this evidence should, where	Amended

should be recorded.	suggest that CIMA review this requirement.	necessary be supplemented by additional information such as……..	
B 22, 26, 28, 40, 47 Pages 40, 41, 43 and 45 B 22 - Identification documents, either originals or certified copies, should be pre-signed and bear a photograph of the applicant	The GN states that the identification and verification documents should be either originals or certified copies. This concept pre-dates revolutionary changes in technology and the availability of online information. In accordance with a robust RBA, the use of "electronic identity" complemented by fully authenticated verification (e.g. biometrics or algorithmic facial recognition) is in reality a lower risk than the acceptance of certified paper identification. Recommends that the Authority to consider including a third option allowing verifying by independent means using RBA. This approach would be consistent with Section 4 B(7) - and Part III the SSGN for Banks page 6, 15 and 19 - "*For non-face-to-face verification, suitably certified or authenticated documents*." Also see Sec 4 A, para 7 on	Agree with including the third option. "..Either originals, certified copies or, subject to paragraph (xx) below, legitimate electronic documentation…" "….acceptable provided that the FSP takes a RBA and has suitable documented policies and procedures are in place to ensure the authenticity of the electronic document(s). The FSP should, for example, check the type of electronic file and ensure that it is tamper resistant….."	Amended

	pg 25; para 25 on pg 41		
B 27 Page 41 If information cannot be obtained from the sources referred above to enable …….	Missing a "to" after referred	Noted, will be amended	Amended
B.28(5) Page 41 FSPs should also take appropriate steps to verify the name and address of applicants by one or more methods, for example…. Requesting sight of a recent rates or utility bill. Care must be taken that the document is an original and not a copy	Note that under s.9(2)(a) of the Electronic Transactions Law (2003 Revision) a document originally issued in electronic form is to be regarded as an "original" if presented in electronic form. This is particularly relevant in the context that utility companies now routinely issue electronic rather than hard copy statements/bills. Suggestion to add "If a document is presented in electronic form, it may be regarded as an original if it is apparent that it was issued or created in such electronic form"	Agree with a slight amendment to the proposed wording. Therefore, this will be reworded with something more robust than "apparent"	Amended
B37 Page 43 "Where possible, face-to-face customers must show FSP's staff original documents. Copies should be taken immediately, retained and certified by a senior staff member at the managerial level."	This requirement may not be effective in many organisations can be viewed as onerous as a senior staff member will most likely not be available at all times to certify every original document presented by a client at the time of on-boarding. Suggestion to re-worded to	Senior staff members do not necessarily include a member of senior management/board of directors. Paragraph will be amended to include 'a member of staff that is suitably trained'.	Amended

	state: "[…] retained and certified by a suitably trained staff member" OR clarify what "senior staff member" means (i.e. this cannot be the Managing Director or equivalent).		
B 42(1) Page 43 The identity of the natural persons (if any – as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest in a legal person	This section should make it clear that a "controlling ownership interest" means a 10% interest as per the definition of "beneficial owner" in the AMLRs Suggestion to add "10%" before the words "controlling ownership interest"	Agreed. amended to reflect the wording in the AMLRs.	Amended
B 42(3) Page 44 Where no natural person is identified under (1) or (2) above, FSPs should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of the director, manager, general partner, president, chief executive officer or such other person who is in an equal senior management position	This section seems to assume there will only be one director, manager etc., but in reality this will usually not be the case. Suggestion to change wording to refer to the senior executive officer or, if not applicable, two directors, managers or equivalent.	Partially agreed. Will be amended for clarity and to align with the RBA.	Amended
B 43(1) Page 44 The following paragraphs provide detailed guidance as to the required documented information concerning corporate (legal persons) customers : Certificate of Incorporation or equivalent,	Many customers, such as unstaffed mutual funds, will not have a place of business because their business is delegated entirely to a third party manager. Suggestion to add ", if	The paragraph will be amended along the lines of "….details of the registered office, and, if different, a principal place of business…"	Amended

details of the registered office, and place of business	applicable" prior to "place of business"		
B 43(2) Page 44 The following paragraphs provide detailed guidance as to the required documented information concerning corporate (legal persons) customers.. …Explanation of the nature of the applicant's business, the reason for the relationship being established, an indication of the expected turnover, the source of funds, and a copy of the last available financial statements where appropriate…..	This paragraph sets a requirement to obtain a copy of the last available financial statements, where appropriate. Financial statements are rarely obtained in practice due to the fact that (i) they are usually the FSPs incorporating the structure so financials would not be available(ii) privately owned companies often benefit from exemptions in their home jurisdictions from maintaining formal accounts Requests for some clarification as to when the collection of financials would be absolute requirement	Would partially agree. i.e. flexibility/options should be incorporated into all of B 43 depending on risk (e.g. Amend to incorporate principle set out in Section 3 D 8(1)).	Amended
B.43(3) Page 44 Satisfactory evidence of the identity of each of the legal owners, beneficial owners and a Register of Members	Certain types of corporate customer (e.g. US LLCs) may not have a "Register of Members" and this adds nothing to the preceding wording. Suggest Delete "and a Register of Members" It appears that the requirement to obtain	No Change in requirement relation to Register of members. However, concept of RBA included Beneficial ownership threshold (10%) is prescribed in the AMLRs Will consider including a	Amended

	evidence on each principal beneficial owners ("BOs") holding 10% has been replaced with " satisfactory evidence of the identity of each of the legal and beneficial owners" The term legal owners is not defined and it is unclear that 10% threshold is still in place. Request for clarification if the threshold will be set for 25% to be in line with the Cayman BO registration regime	definition for "Legal owners"	
B.43(8) Page 44 Copies of the list/register of directors	Certain types of corporate customer (e.g. LLCs) may not have directors, or even an equivalent. Suggestion to add after "directors" the words "or their equivalent (if applicable)"	Partially agreed. Will be amended to include "or their equivalent". Also, see explanation provided in B 43 below.	Amended
B 43(9) Page 44 Satisfactory evidence of identity must be established for directors, one of whom should, if applicable, be an executive director where different from account signatories	Under the prior GNs it was only necessary to obtain CDD on 2 directors. Requiring it on every director will render many FSPs unnecessarily non-compliant. If this is thought necessary for certain FSPs, such as banks, they should be distinguished. Revert to prior wording – i.e. insert "two" prior to "directors" and, if necessary,	This paragraph/requirement will be amended to suggest that a RBA be taken in determining the number of directors on whom due diligence should be conducted and the need to document the rationale for such determination.	Amended

	add "or all directors in the case of [banking business]" Suggested wording Satisfactory evidence of identity must be established for **<u>at least two</u>** directors, one of whom should, if applicable, be an executive director where different from account signatories. **Please also apply to the sector specific guidance:** Page 3 of Fiduciary Part (D1(4)) Page 6 (E2) of the Banking Part Another suggestion to amend as above in 43(8)		
B 43	As a general comment, it would be helpful to expressly state that where there is a chain of ownership, the FSP can take a RBA to the documents required to evidence the chain (i.e. it won't be necessary to get all the documents specified in B 43 for every level in the chain, just evidence of existence and ownership). Suggestion Insert as an additional sub—section in B.43, "Evidence of	Agreed. Amended to tie to the RBA i.e., to determine on whom and to what extent DD should be performed. Requirement for obtaining the Register of members is already in 43(3)	Amended

	the chain of ownership (such as a structure chart and/or register of members) through which any beneficial owner holds an indirect interest of 10% or more, which shall include satisfactory evidence of the existence and ownership of each intermediate entity"		
B 45 Page 45 Where the FSP feels that there may be additional operational or ML/TF risk, it may obtain further evidence in order to reassure itself, which might include a full list of shareholders	It is unclear what this section adds to B.43(3). Suggest to delete	Agreed. Will be deleted, as taking a RBA (per the amendment as mentioned in the above item) would address this issue. .	Deleted
B 48 Page 45 It is recognised that on some occasions companies may be used as a disguise for their beneficial owner. These are sometimes referred to as 'shell companies'. FSPs shall not engage in business relationship with shell companies	This section is unhelpful as it gives no guidance on what is to be regarded as a "shell company". Virtually any company could potentially fall into this category Suggest deleting this paragraph	The Authority will amend to remove second sentence of this paragraph and amend the third sentence to read "FSPs shall not engage in business relationship with such entities"	Amended
B 50 Page 45 In the case of Cayman Islands limited partnerships and other unincorporated businesses or partnerships in which, for example, the general partner does not fall within the exempted category set out in this section, FSPs should obtain, where relevant	No clarity as to the …." the exempted category set out in this section "…. Suggestion "In the case of Cayman Islands limited partnerships and other unincorporated businesses or partnerships where the due diligence on the general partner (or	Agreed. Amended to remove wording "in which, for example, the general partner does not fall within the exempted category set out in this section". Also amended 50(1) to require identification evidence for general partner.	Amended

	equivalent) is not obtained…"		
B 53 page 46 Where the customer or the owner of the controlling interest is a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies. The relevant identification data may be obtained from a public register, from the customer or from other reliable sources	This paragraph excuses identification and verification of shareholders and beneficial owners where the customer, or the owner of the controlling interest, is a listed entity. Currently this only applies to Trust and Fiduciary Customers Suggestion that such exemption be applied to all other FSPs. Suggested wording: Paragraph 53 on page 46 could be deleted, and a new paragraph 42 inserted with the heading "Regulated or Government Entities in customer ownership chain" and with the wording as follows: "Where the customer, or the owner of the controlling interest in the customer, is a Regulated or Government Entity, it is not necessary to verify such Regulated or Government Entity other than by using reliable publicly available sources, or to identify and verify the identity of any beneficial owner or beneficiary of such	Except for the one-off transactions worth below KYD 15,000, the AMLRs do not allow any exemptions for conducting CDD. Section 5 provides guidance on the SDD provisions allowed in the AMLRs. This wording in paragraph (B 53) will be deleted.	Amended

	Regulated or Government Entity"		
Para 56 Page 47	"Discretion must be exercised but in a manner consistent with the spirit of these Guidance Notes."	This sentence will be replaced to reflect the concept of RBA. Where it is impractical to obtain all the information suggested, FSPs shall take a RBA as per section 3 of the GN and determine whether and what steps/measures should be adopted to manage the risks of not having the information.	Amended
B-65, 66, 67 Page 48 and 49 It is recognised, however, that a managed FSP may have to delegate AML compliance functions in accordance with the principles set out in these Guidance Notes Where the delegate is located in a 5(2)(a) country and is subject to the AML/CFT regime of that country, the Monetary Authority will regard compliance with the regulations of such jurisdictions as compliance with the AMLRs and Guidance Notes Where the function is sub-delegated to a person in a country that is not a 5(2)(a) country, then it is the responsibility of the FSP to ensure that the sub-delegate complies with the obligations required by	The majority of Cayman Islands **FSPs** subject to the AMLRs (i.e. legal persons or arrangements) are unstaffed in the Cayman Islands and their functions are delegated Rather than requiring FSPs to perform the gap analysis the expectation of industry would be that the AMLSG be responsible for determining what an equivalent jurisdiction is and the FSPs can rely on that determination. It is not feasible or practical for each FSP to analyse multiple countries AML regimes and would be duplicative (re-review) in case of AMLSG countries.	FSPs are required to comply with the AML/CFT requirements that are at least the standard of the Cayman Islands. As such, for the purpose of ensuring that they are complying with the AML/CFT standards that are at least equal to the Cayman, FSPs are required to conduct gap analysis. D2 on page 23 refers to the gap analysis between group-wide programmes and the Cayman Islands AML/CFT legislative and regulatory requirements	None

the Cayman Islands	Introduces uncertainty and increased cost into the process of registering new funds as well as significant potential costs for existing funds Suggest to delete paragraph 68 and amend the following paragraphs Part II Section 4 E, 6 and 7 (page 58) Part II Section 8 B2 (page 69) and E 1 (page 70) Part II Section 10 C, 10 Consider removing Section 2 D page 23 in its entirety. Where delegation occurs to a deemed equivalent jurisdiction no gap analysis should be required.		
B 68 Page 48 Where the Compliance function is outsourced or where the managed FSP is relying on an Eligible Introducer ("EI") from another jurisdiction, a gap analysis should be conducted before relying on the EI or outsourcing arrangement. The analysis should be conducted to identify the difference between compliance requirements of the Cayman Islands and those of the jurisdiction in which the person to whom the compliance function	The guidance regarding outsourced compliance functions and reliance on Eligible Introducers should be clarified to state that such gap analysis would only need to be conducted in the event that an outsourced service provider or EI were **not** located in a jurisdiction listed on the "AMLSG List").	Explanation in relation to gap analysis requirement is provided above. Detailed guidance in relation to outsourcing is provided in section 10. According to the AMLRs reliance on EIs for verification purposes is only allowed in case of low risks/SDD	None

is outsourced operates or in which the EI operates. Where gaps are identified during the gap analysis, FSPs shall ensure that the EI or the outsourced entity follows the standards established by the Cayman Islands;	This clarification would provide consistency with CIMA's other guidance on this topic, for example, under the Section 5- SDD, paragraph B(4) that states that "FSPs may rely on third parties (located on the AMLSG List) from these countries when conducting SDD..." The AML risks in respect of a delegation of the compliance function under item 66 is no different to a delegation under an outsourcing arrangement or an EI arrangement. Suggest that (i) terms outsourced and compliance function be specifically defined. (ii) add an equivalent country exemption to item 68 and (iii) as outsourcing and EI are completely separate arrangements, each should have its own guidance.		
C1 page 49 The best time to undertake verification is prior to entry into the business relationship or conducting a transaction. However, it could be necessary for sound business reasons to open an account or carry out a significant one-off transaction before verification can be completed. FSPs may complete verification after the	Recommendation that consideration be given to adding business conducted through third party brokers/agents as an example of types of circumstances where it would be permissible for verification to be completed after the	Language in this paragraph is broad enough to capture wide variety of scenarios. In scenarios that satisfy the given criteria, FSPs are allowed to conduct verification after establishing the business relationship. FSPs should also take into	None

establishment of the business relationship, provided that: 1. This occurs as soon as reasonably practicable; 2. This is essential not to interrupt the normal conduct of business; and 3. The ML/TF risks are effectively managed	establishment of the business relationship, because it would be essential not to interrupt the normal conduct of business.	consideration ML/TF risks in determining whether to complete verification prior to or after establishing relationship.	
G 1 Page 51 Simplified customer due diligence is unacceptable for specific higher-risk scenarios. Higher-risk scenarios may include, but are not limited to the following: a customer is not physically present for identification purposes	Non-face to face transactions are noted as a category of high-risk transactions to which FSPs cannot apply SDD Suggested wording Higher-risk scenarios may include, <u>depending on the nature of the business (e.g. retail banking)</u>, but are not limited to the following: (1) <u>Save for offshore, non-retail or institutional business</u>, a customer is not physically present for identification purposes	Paragraph G1 (1) will be removed. FSPs shall have regard to the risk analysis and overall risk rating in determining the extent of CDD measures and this paragraph will be amended accordingly for clarity.	Amended
H 9 Page 53	Typo "." At the beginning of the sentence	Noted, will be amended	Amended
Section 5			
REg 8 regime	The old Reg 8 regime, the exemption from obtaining KYC on clients where funds are coming in from a recognised jurisdiction regulated bank account has still	Agreed. – Will amend relevant paragraphs	Amended

	come over into the draft although the AMLRs have changed this that KYC must be obtained before the redemption of the funds		
EI Letters	The EI regime now allows to obtain EI letters from entities that are listed on the stock exchange and from government owned entities as well as pension funds. These are entities that SDD can be applied to but it does not necessarily mean they will have KYC on other clients. This is set out in the AMLRs and there may not be much CIMA can do however it is still worth mentioning to see if CIMA can address this on a larger scale with Government	Noted. No change as this is what is provided for in AMLRs	None
C1 Page 55 C1(4) the applicant/customer is a person who: 1. is required to comply with the regulation 5 or is a majority-owned subsidiary of the relevant financial business; 2. is a central or local government organisation, statutory body or agency of government in a country specified in the AMLSG List (previously, known as Schedule 3 country list);	Suggestion that these Acceptable Applicant sub-categories be collectively defined as "Regulated or Government Entities" and added to the list in the Glossary & Acronyms. "the applicant/customer is a Regulated or Government Entity" and means a person who- (a) is required to comply with the Anti-Money Laundering Regulations, 2017 or is a	The Authority does not agree on any change (at this time) as: (1) not critical to facilitate understanding of GNs; (2) potentially misleading as listed company may not be regulated nor a Government entity (3) concept of control not captured by ALMRs	None

3. is acting in the course of a business or is a majority-owned subsidiary of the business in relation to which an overseas regulatory authority exercises regulatory functions and is based or incorporated in, or formed under the law of, a country specified in the AMLSG List; 4. is a company that is listed on a recognised stock exchange and subject to disclosure requirements which impose requirements to ensure adequate transparency of beneficial ownership, or majority owned subsidiary of a such company 5. is a pension fund for a professional association, trade union or is acting on behalf of employees of an entity referred to in subparagraphs (a), to (d) above	majority owned or controlled subsidiary of the relevant financial business; (b) …….Equivalent Jurisdiction (previously, known as Schedule 3 country) or is a majority owned or controlled subsidiary of such an organisation, body or agency; (c)……. is based or incorporated in, or formed under the law of, an Equivalent Jurisdiction and regulated by an overseas regulatory authority, or is a majority owned or controlled subsidiary of the such an entity; (d) …… to ensure adequate transparency of beneficial ownership, or majority owned or controlled subsidiary of a such company; or (e)…….		
D Page 56	The guidance provided in this section could be construed as inconsistent with Regulation 23 of the AMLR's. As stated in Reg 23, "verification of the	Agreed. Will amend in GNs	Amended

	identity of the customer…is not required at the time of payment... and verification of the identity of the customer…**is required to be obtained before payment of proceeds**." Because the GN's do not reiterate the AMLR's point that verification must be completed prior to payment of any proceeds, we would like to understand if this is an intentional or unintentional omission. If CIMA has intentionally omitted guidance on this point, will the Updated AMLRs not be updated to require such verification prior to payment of proceeds? Alternatively, does the GN's Section 5, Paragraph (D) allude to CIMA's permission to grandfather those customers whose incoming funds were compliant with Regulation 8 of the Money Laundering Regulations (2015 Revision)?		
D 2-3 Page 52 It may be reasonable to take no further steps to verify identity when payment is made by post, in person or electronic means, or details of the payment to be delivered by post or in person, to be confirmed via telephone or other	Contradicts Reg 23 (2) (c) because of the insertion of the word "not". Request for clarification of the term "onward payment" Recommend to amend D	Agreed. Will amend GNs	Amended

electronic means if the payment is made from an account (or joint account) in the applicant's name at a bank in a country specified in the AMLSG List if it does not fall within the following categories: (1) the circumstances of the payment are such that a person handling the transaction knows or suspects that the applicant for business is engaged in ML/TF, or that the transaction is carried out on behalf of another person engaged in ML/TF; (2) the payment is made for the purpose of opening a relevant account with a bank licensed under the BTCL in the Cayman Islands; or (3) onward payment is to be made in such way that it is not or does not result in a payment directly to the applicant or any other person. If the payment does fall into one of the above categories then the evidence of identity of the applicant must be obtained in accordance with the full identification procedures as outlined in the previous section of this part of the Guidance Notes unless the payment is being made by operation of law. For instance, if the payment of the proceeds requires to be made to a person for whom a court is required to adjudicate payment; e.g. trustee in bankruptcy, a liquidator, a	2(3) to read as follows: onward payment is to be made in such a way that it ~~is not or does not~~ results in a payment ~~directly~~ to the applicant or any other person (other than a payment directly to the same bank account of the applicant from which the original payment was received)." Moreover, the wording in D2 seems to allow for funds to go back to an account in the name of an investor even if it is not the same account from where the funds originated If that it is the case how could the monitoring and refresh requirements be applied?		

trustee for an insane person or a trustee of the estate of a deceased person.			
E 5(4) Page 57 Furthermore, an FSP shall not rely on the applicant unless the applicant provides a written assurance confirming that: The applicant will upon request by the FSP provide the copies of the identification and verification data or information and relevant documentation without any delay after satisfying the CDD requirements in respect of the principal and the beneficial owner	Where the applicant is acting as agent or nominee, the requirement that the nominee/agent will make copies of the identification and verification data of the underlying principals/BOs may be subject to certain legal protections, depending upon the jurisdiction in which the agent/nominee is located The private wealth divisions of large international banks and custodians typically use nominee structures to invest in mutual funds on behalf of their clients. This requirement could adversely affect their willingness to allocate/invest in mutual funds. The situation is distinguishable from a simple principal/agency relationship where a lawyer might be acting as agent for one underlying principal. A possible compromise could be that the agent/nominee is required to represent that upon request by the FSP from the Authority for underlying principal/beneficial owner	The current wording reflects the requirements under the AMLRs and is in line with the FATF standards	None

	information, the nominee will make such information available to the Authority		
E 5(4) Page 57 and 58	With respect to the AML letter and the Eligible Introducer letter referenced in these 2 sections, we note that different countries are applying different standards with respect to UBOs so it is possible that the provider of the letter utilizes a threshold % that is larger than the Cayman Islands' 10% threshold. This potential problem needs to be considered in the guidance notes.	10% threshold is prescribed under the AMLRs	None
E 6 Page 57 Furthermore, a FSP who is bound by regulation 5 and who relies on the written assurance provided as specified above by the applicant is liable for any failure of the applicant to obtain and record the evidence of identity of the principal or beneficial owner, or to make the same available to the FSP on request without delay	Taking a RBA where the factors such as jurisdictions in which the nominee/agent is based, applicable AML legislation in their jurisdiction, their reputation/history in the investment industry, their systems in relation to CDD, indicate that the nominee/agent's DD procedures are reasonable FSPs should be permitted to rely on written representations by such	Wording is in line with the AMLRs and the FATF recommendations	None

	agent/nominee without strict liability for any failures. Recommendation that a safe harbour be created that allows an FSP to avoid liability where they have undertaken reasonable due diligence on the nominee This is more reasonable in the EI context given the testing requirements which FSPs must undertake when relying on EIs		
Paragraph before E7 Page 58 Need to number this paragraph FSPs may place reliance on the due diligence procedures of third party "Eligible Introducers" ("EI") with respect to applicants for business who are introduced by the EI and for whom the EI provides a written assurance meeting the criteria in Section 5.D.5 above confirming that they have conducted customer verification procedures substantially in accordance with the AMLRs and the Guidance Notes. The AMLRs further specify and limits EIs to a person that is listed under acceptable applicants above in C. 1. (4)	This is relying on EIs to be the same as the institutions exempted from standard due diligence such as entities listed on a recognized stock exchange and state owned entities and pension funds, this does not necessarily mean that these entities meet the criteria for an EI . This needs to be rethought Also suggest to amend Paragraph 6 to replace "AMLRs and the Guidance Notes" with "The AML regime to which they are subject"	Wording is in line with the AMLRs Wording reflects the fact that FSPs should comply with the Cayman Islands legislation and regulatory requirements	None
E 7 page 58 The FSP is ultimately responsible for ensuring that adequate due diligence procedures are followed and that the	Amend the paragraph to remove the wording "which is at least the standard of the Cayman Islands"	The wording used in that para. is intended to provide clarity.	None

documentary evidence of the Eligible Introducer ("EI"), that is being relied upon, is satisfactory for these purposes. Satisfactory evidence is such evidence as will satisfy the AML/CFT regime in the AMLSG List country (which is at least the standard of the Cayman Islands) from which the introduction is made.			
E8 Page 58 Only senior management should take the decision that reliance may be placed on the EI and the basis for deciding that normal due diligence procedures need not be followed should be part of the FSP's risk-based assessment and should be recorded and the record retained in accordance with the AMLRs. (See Appendix C for Introduced Business Flow Chart).	Reference is made to Appendix C but there is no Appendix C attached in the draft GN	Will be included	Included
F1 Page 60 Unless a transaction is a suspicious one, an FSP is not required to obtain documentary evidence of identity for one-off transactions. In the event of any knowledge or suspicion that ML/TF has occurred or is occurring, the case should be treated the same as one requiring verification and reporting	The CI$15k limit appears to have been inadvertently omitted. Insert after "one-off transactions" the words "valued less than CI$15,000"	KYD 15,000 will be added for clarity	Amended
F2 Page 60 One-off transaction valued less than KYD 15,000 - is a one-off transaction where the amount of the (single) transaction or the aggregate of a series of linked transactions is less than CI$15,000.	Refers to KYD 15,000 and CI $15,000 Should be made consistent	Agreed. Will be amended for consistency	Amended

Section 6			
C Page 63 FSPs should exercise additional caution and conduct enhanced due diligence on individuals and/or entities based in high-risk countries	High Risk Countries: This contradicts the combined risk based approach in section 3. Part C suggests that if a customer is from a high risk country that automatically EDD must be done. This needs to be clarified as FSPs will concentrate efforts and resources on creating a robust combined risk assessment which will include country risk.	The language in accordance with the AMLRs and the FATF standards	None
Section 7			
PEPs Page 65	Given the FATF recommendation regarding foreign and domestic PEPs, would there be any further clarification under the PEP status section to address this classification and also the RBA that FSPs should exercise in relation to domestic and foreign PEPs. Family members of PEP – to ensure FSPs correctly identify PEP connection via family, would there be any further guidance on the relationship level to be classified as a PEP – Eg: cousin, uncle, aunt **<u>or</u>** just immediate family	Language is in line with the AMLR requirements Definitions were provided in the AMLRs and FSPs should apply common sense and take a risk based approach on a case by case basis in determining whether to consider the person as a	None

	members – sister, brother, mother, father	family member or close associate of a PEP	
Section 8			
A 3 Page 68 Beneficial ownership information must be maintained for at least 5 years after the date on which the customer (a legal entity) is dissolved or otherwise ceases to exist, or five years after the date on which the customer ceases to be a customer of the (professional intermediary or) the FSP.	Should be reworded to read …"earlier of" at least 5 years after the date…..	The current language is in line with the AMLRs	None
B1 page 69 There may be circumstances in which group records are stored centrally outside the Cayman Islands. However, FSPs should ensure that core records are maintained locally.	What are "Core Records" If the local office can easily access the records per B2 why should the core documents be kept locally Recommendation that instead the GN refer to the SOG on Nature, accessibility and retention of records which already accounts for the logistical issues mentioned Another recommendation Delete B1. As discussed above, the majority of FSPs' business is unstaffed in the Cayman Islands. Records ought to be maintained in accordance with the SOG:	Agreed. Will be amended Second sentence of B1 will be removed and merged with B2	Amended

	Nature, Accessibility and Retention of Records and a more onerous requirement should not be introduced which does not take into account how the majority of Cayman Islands financial services business functions.		
B2 Page 69 In the case of records that are maintained outside the Cayman Islands, the records shall be maintained in accordance with the AMLRs and should be able to be retrieved and provided to the competent authorities promptly on request.	Recommendation that the records should be maintained in accordance with the Authority's SOG on Nature, accessibility and retention of records" but not in accordance with the AMLRs.	FSPs should comply with the AMLRs. However, a reference to the "SOG on the Nature, accessibility and retention of records" will be included in this paragraph.	Amended
E1 Page 70 Where the FSP has delegated any or all of the foregoing functions to a person or institution in an AMLSG List country then it must be satisfied that the relevant records will be maintained in accordance with the relevant requirements of the AMLRs	Recommendation that in case of outsourcing to a person or institution in an AMLSG List country then it must be satisfied that the relevant records will be maintained in accordance with the relevant requirements of the ~~(AMLRs)~~ Monetary Authority's Statement of Guidance: Nature, Accessibility and Retention of Records	References are made to section 10 of part II of the GN and SOG on the Nature, accessibility and retention of records	Amended

Section 9			
B1 Page 71 & B7 Page 72 B1- Each FSP should designate a suitably qualified and experienced person as Money Laundering Reporting Officer (MLRO) at management level, to whom suspicious activity reports must be made by staff B7- Where it is not possible to nominate a staff member (or a sole trader, him/herself) as a DMLRO, the FSP may delegate/outsource the DMLRO function in a similar manner to the MLRO as specified above.	If CIMA requires MLROs (where possible) to be independent of the primary business lines, this should be stated in the guidance. However, it should also be clarified that in small businesses/sole traders, it is possible for individuals to combine their role as MLRO with their primary business activity.	Noted. The Authority will consider this at a later date	None
B 6(2) Page 72 Delegate/outsource the MLRO function in accordance with the principles set out in these Guidance Notes. See section 10 for guidance on outsourcing.	Suggest Insertion: Delegate / Outsource the MLRO function " (if permitted by the FSP's internal policies)" in accordance with the principles set out in the GN	Suggested wording not necessary. With respect to further guidance on outsourcing, FSPs should refer to section 10 of Part II of the GN. FSPs may also refer to the SOG on outsourcing issued by CIMA.	None
E(6) page 75	"And" at the end of item 6	Noted, will be amended	Amended
Section 10			
B1 Page 79 An FSP should, on a regular basis, conduct an AML/CFT audit to assess the AML/CFT systems which include…..	The term on a "regular basis" is too vague for FSPs. Recommendations should be something more procedural such as "based on the FSPs Business Risk assessment" or something more suitable to the regulators. Also, there	Agreed. The frequency of audits should be commensurate with the FSP's nature, size, complexity and the ML/TF risks identified during the risk assessments. Amendment will be made accordingly.	Amended

	should language around this function being mandatory.		
C10 Page 81 Where the OSP operates from a country outside the Cayman Islands in which the standards are lower when compared to the Cayman Islands, then the service provider should adopt the Cayman Islands standards. The same approach should be adopted in case of sub-contracting. Where the sub-contractor is from a country whose standards are lower when compared to the Cayman Islands, the sub-contractor should adopt the standards of the Cayman Islands	Recommendation to amend to be consistent with Part II Section 4 B. 65 to 67): Suggestion to insert: "Where the OSP or any sub-contractor are located in an Equivalent Jurisdiction and are subject to the AML/CFT regime of that country, CIMA will regard compliance with the regulations of such Equivalent Jurisdictions as compliance with the AMLRs and GN."	The Authority is of the view that the current wording is clear	None
D(1) Page 81 The ALMRs (5 (a) (iii)) require ……..	should be AMLRs and not ALMRs	Agreed. Will be amended	Amended
E AML Training	We understand that the Authority expect an AML test to be conducted after the training. If that is policy it should be reflected in the guidance.	The staff should understand the ML/TF risks, compliance obligations. FSPs should provide training to their staff in accordance with the AMLRs. The AMLRs and GNs do not require testing and no specific provisions in relation to the testing of staff training are embedded in the GN	None

Part III of the GN			
Section	**Industry comment**	**Authority's response**	**Consequent amendments to the draft GN**
Section 1			
E 2(4)	Instead of an absolute requirement, Bank references should be part of a risk based approach, as there are a variety of alternative public informational sources that can be used to verify the true name, current address or place of business date of birth and nationality of a prospective client.	Agreed. Will be amended to reflect the requirement in section 4 B 20 of part II of the GN	Amended
H4 Page 11 Electronic payments ordered in small amounts in an apparent effort to avoid triggering identification or reporting requirements	Recommendation to amend "Multiple electronic payments ordered……."	Noted, amendment will be made as suggested.	Amended

Part IV of the GN			
Section	**Industry comment**	**Authority's response**	**Consequent amendments to the draft GN**
Section 1			
D5(3) Page 4 Where the CSP is approached by a shareholder or beneficial owner, or directors or officers as the applicant for business, the CSP should carry out appropriate due diligence on: anyone who gives instructions to the company manager on behalf of: (a) the company; (b) the directors and officers of the company; or (c) the shareholders and beneficial owners of the company.	It should be clarified that this is not intended to catch professional service providers, such as legal counsel who are merely relaying instructions	The current language is in line with the AMLRs	None
D 14 (See section 4 B 14 of Part II) Funds held to the order of a client or prospective client should only be returned to the source from which they came and not to a third party	The stipulation that "*Funds held to the order of a client or prospective client should only be returned to the source from which they came and not to a third party.*" Should be amended to reflect the fact that doing so, where the relationship is being discontinued for suspicious purposes, could result in tipping off.	In general, FSPs should pay caution and take steps to avoid tipping off, not only in this particular instance. However, this paragraph will be amended to include exemptions with some examples of cases i.e., when funds could be returned to third parties.	None

F 2(6)	Split boards are common in the investment funds industry and often considered best practice – this should not be a red flag (or the point should be explained more clearly)	Noted	Deleted
Section 2			
E 13 page 11	Circumstances in which enhanced due diligence is relevant include circumstances where: (1) a customer is resident in another country or territory; (2) a customer is not physically present for identification purpose; or (3) a customer is a company with nominee shareholders At least one of these 3 factors will be present in the Cayman Islands context. Suggest to delete this paragraph	This will be amended to include the concept of RBA	Amended

Part V of the GN			
Section	**Industry comment**	**Authority's response**	**Consequent amendments to the draft GN**
General Observations			
	It is not clear whether licensees that are not involved in long-term business are scoped in or scoped out of the AML Regulations. Suggestion to redraft with regard to the definition of "insurance business" therein. Explicitly state whether insurers and reinsurers who do not write long-term business are scoped out of the AML Regulations	POCL and AMLRs clearly state the applicability	None
Section 1			
B1 Page 3 The AMLRs are mainly applicable to insurance business as specified in its Schedule, which includes life and annuity business, and all of which are described as long term insurance. Whilst the AMLRs do not apply directly to general insurers, from a sound risk management and internal controls perspective, such insurers are still expected to have policies and procedures in place to prevent ML/TF, in accordance with these Guidance Notes.	This provision states that the AMLRs do not directly apply to general insurers but then continues to state that such insurers ae still expected to have policies and procedures in place to prevent ML/TF, in accordance with the GN. Recommendation that the GN elaborate on this section and directly identify which requirements of the GN general insurers are expected to comply with.	Although the AMLRs do not directly apply to general insurance entities including agents, brokers and managers, these entities nevertheless have general AML/CFT obligations under the POCL to prevent and report ML/TF. For the purpose of complying with their wider AML/CFT obligations, these entities should have regard to (be guided by) the GN and	None

		establish and implement appropriate policies and procedures.	
B2 Page 3 Section 4 of the AMLRs states that the AMLCO shall ensure that measures set out in these Regulations are adopted by companies carrying out relevant financial business. ……	Mention of "these Regulations" reference should probably state "in the Regulations" or "in the AMLRs".	Noted, amendment will be made to read " in the AMLRs"	Amended
	This provision can be interpreted to mean that the AMLRs do not apply directly to insurers writing general insurance and that insurers are not required to have policies and procedures in place to prevent ML/TF. Recommendation that this provision be drafted clearer	Explanation provided in B1 above	None
C3 Page 4 Regardless, there is some ML/TF risk within the international insurance sector. Captive insurance companies can be formed to attempt to evade taxes in the parent's home jurisdiction and ILS structures must be vigilant to prevent criminals from laundering funds through the purchase of catastrophe bonds, for example…..	Second sentence is not helpful and an inaccurate generalization that captives are vehicles for tax evasion. Suggest Delete second sentence from C.3. and if an example is necessary, add to the table under para E.5.	Agreed. As with many other high risk structures, captive insurance companies may be misused for ML/TF purposes. As such, FSPs (such as ILs structures) must be vigilant to prevent criminals from using them for ML/TF purposes Second sentence will be amended accordingly	Amended.
D 1(3) Page 5	The focus should be on (i)	The Authority is of the view	None

Companies conducting insurance business must apply a risk-based approach to mitigate the risk that their company will be used for ML/TF. The risk-based approach requires a FSP to take steps to identify the risks relating to: the products, services and transactions of the company: for example, does the product have a cash-in value and can it easily be used for ML/TF purposes	liquidity of the product; and (ii) associated surrender fees. The test ought to be whether the insurer will review the transaction and request KYC associated with the surrender request prior to sending the product's cash proceeds to the policyholder Suggestion to add wording as indicated: "does the product have a cash-in value and can it easily be used for ML/TF purposes <u>or are there surrender fees that impact the cash-in value</u>.	that based on the typologies, it is evident that money launderers are not particularly concerned with the issue of costs. Therefore, we do not think it is necessary to make the suggested change.	
E1 Page 5 The risk-based approach should lead the FSP to consider the inherent risk within the nature of the product being underwritten/sold, the amounts involved, the ability to surrender the product for a cash value, the ability to add riders to the policy, amongst other things.	See above Add wording as indicated: state: "the ability to surrender the product for cash value <u>without surrender fees</u>"	See explanation above	None
E2 Page 6 A significant factor determining the level of ML/TF risk in any product is the level of premium payable on the policy and method of payment. For example, a motor policy with an annual premium of $1000 will present a much lower risk than one on a luxury car or car fleet in the case of a commercial motor policy, which commands a much higher premium and value at risk	Level of premium may not necessarily be indicative of a significant risk, especially for a reinsurer. Suggestion to reword the paragraph to clarify that premium volume risk factor applies to primary insurance policies and not reinsurance policies	N/A	None

E5 Page 6 Some of the features of high risk and low risk general insurance products are listed below…	No "medium risk" features listed. At a minimum, the existence of a medium risk life insurance product should be recognized. Suggestion to include some of the features of a medium risk life and long-term insurance products. E.g. Medium risk features: 1.Non-pension products that are utilized for long-term or retirement savings 2. Insurance products that have a cash value, but also have product features that limit transferability or liquidity of the product, such as surrender fees Another recommendation that a similar premium threshold be added here for general insurance business as added under page 7 for long term for example. Low general insurance policies where the total premium payable annually is no more than KYD 800, or a single premium of no more than KYD 2000.	The AMLRs refer to low and high risks, and therefore, the consideration of medium risks is implied The Authority will consider this in the future revision of the GN.	None
H 4 Page 9	The AMLRs have a specific provision dealing with	Agreed. Will be amended to be consistent with the AMLRs	Amended

That said, identification and verification of the beneficiary may take place after the insurance contract has been concluded with the policyholder, provided the ML/TF risks are not significantly high and are effectively managed ……. Another example is where an insurance contract permits an applicant to delay naming a beneficiary, or permits changes to beneficiaries during the life of the insurance policy, the identity of the beneficiary may be obtained at the time the beneficiary is named	beneficiaries of life insurance - under Part IV – CDD, paragraph 13, which states that due diligence on a beneficiary on a life or other investment related insurance policy shall occur "as soon as the beneficiary is identified or designated and shall do so no later than at the time of the **pay-out**…." The Guidance Notes, under Section H, paragraph 4, state that "the identity of the beneficiary may be obtained at the time the beneficiary is **named**." The Draft GNs are inconsistent with the AML Regulations and should be amended to reflect a beneficiary's identity should be verified no later than at the time of pay out		
H1 Page 9	The current "Insurance Specific Information" section creates a concern that insurers have to determine whether proposers have an "insurable interest". "Insurable interest" is not defined under Cayman Islands law. Furthermore, we note that there is a list of "specific	The term "insurable interest" is not a new concept. Insurable interest is a very well established concept and is used in the Insurance Law within the definition of "Domestic Business". The table is not intended to	None

	information that may be requested Recommendation to change to demonstrate that the list is not the exclusive list of information Suggest Personal: 1. That the person is the proposer ~~and has an insurable interest in the risk to be insured~~ 2. The property or other risk to be insured and its valuation <u>and the relationship between the proposed insured and such property or risk.</u> 3. Any other beneficiaries with interests and/or claims on the policy. 4. The source of funds for the payment of the premium. 5. <u>Other facts that may demonstrate a legitimate reason for the transaction.</u> Corporate 1. That the person proposing represents and is authorised to represent the company~~, which has an insurable interests in the risk to be insured~~ 2. The property or other risk to be insured, and its valuation <u>and the</u>	be exhaustive	

	relationship between the proposed insured and such property or risk.. 3. Any other beneficiaries with interests and/or claims on the policy. 4. Source of funds for the payment of the premium. 5. Other facts that may demonstrate a legitimate reason for the transaction		
Item H.2 – 6 Page 9	Numbering of items requires correction	Noted, change will be made	None
H5 Page 10 However, subject to (6) below, where the verification information is not forthcoming at the outset or within a reasonable time after initial contact the proposed business relationship must be re-evaluated and transactions must not proceed	The purpose of the relationship to be re-evaluated would be to determine whether transactions may proceed. Suggest Reword paragraph to allow for transactions to proceed *if* based upon re-evaluation it is deemed appropriate to do so	The Authority is of the view that the language sufficiently reflects the requirements under the AMLRs	None
H8 Page 10 It is recommended that EDD be applied high risk situations and in situations where the insurer is particularly exposed to reputational risk. There will be certain occasions where enhanced due diligence will be required, for example….	Suggest to reword as follows: "It is recommended that EDD ……. There will be certain occasions where enhanced due diligence ~~will~~, may, depending on the circumstances and nature of business, be required, for example…	The current language reflects the requirements under the AMLRs	-

	Typo. Missing "for" after "…be applied…"	Typo will be rectified	Amended
Section 2			
D Page 14 What warning signs or "red flags" should service providers be alert to?	Heading is identical to Section 1, para I, as both say "service providers". Maybe heading in section 2.D. should say "insurance managers" instead of "service providers".	Noted, changes will be made	Amended
Part VI of the GN			
Section	**Industry comment**	**Authority's response**	**Consequent amendments to the draft GN**
General Observations			

Guidance for unsupervised sectors	Since unregulated investment entities now fall under the definition of RFB, can the Authority confirm that they or a similar regulatory body will be issuing guidance that applies to the above said entities.	This will be considered at a later stage, See explanation provided under the "General" section above	None
D 3 Page 4 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	This paragraph notes that MFs and MFAs deal with non-face to face transactions for subscriptions, redemptions and transfers, and that the risk may be mitigated by the use of EIs. EIs are not commonly used by MF and MFAs so do not represent the best example Consequently, this sector guidance should go further and make it clear that SDD may be applied by MF an MFAs for non-face-to-face transactions provided it is done so in accordance with a risk based approach in accordance with the principles of section 3 of part II of the GN. Suggests to replace this paragraph with the following wording "Cayman Islands fund business is, by its nature, predominantly institutional and international, and face-to-face contact with investors	The Authority agrees that a non face-to-face subscription for example, is a high risk factor but does not necessarily make the customer high risk. As such FSPs should take a RBA consider all the other relevant risk factors and take appropriate risk mitigation measures Amendment will be made accordingly	Amended

	is rare. This is not of itself a high risk factor in this context, provided that adequate procedures are properly applied by FSP or their delegates."		
F3 Page 6 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 lowrisk. 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	Allowing non-compliant investor funds to be accessed for further trading prior to full verification is extremely high-risk activity. Suggest that this allowance be removed. In respect of payment of redemption proceeds for non-compliant investors, suggest that the requirement for senior management approval and a risk assessment remain as is. It is not clear from this paragraph whether it means (i) that shares/units/interests should not be applied to the mutual fund prior to verification i.e., not available for access or further trading as mentioned above; (ii) shares/units/interests should not be issued to investors prior to verification; (iii) subscriptions and redemptions should not be issued or paid without senior management approval.	Agreed. Paragraph F3 will be removed	Deleted

	Requests clarity on this.		
F 9 page 7 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	This paragraph contradicts Reg 23, and F5 which needs to be resolved. Recommendation to amend the wording as follow: When ~~redemption proceeds are paid~~ payment is made 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, provided that if the recipient account is not the same account from which subscription proceeds were received, FSP or its delegate should make reasonable enquiry and satisfy itself as to the legitimate reason for such change.	Amendments will be made to make reference to the guidance provided in section 5 of Part II of the GN	Amended
G4 Page 8 A Fund can meet its obligations in relation to the Procedures in one of four ways….	Refers to "Fund", which has not been defined. Should this be Mutual Fund	Agreed. Change will be made	Amended

G 5 Page 8 It should be noted that all Funds must appoint a MLRO and DMLRO as outlined in Regulation 33 of the AMLRs	Need clarification if MLRO/DMLRO are not required if that function has been delegated to a third party? Additionally, clarification required that this can be delegated and that the current standard practice of administrators MLRO fulfilling this function is acceptable. Section 4 of the AMLRs state all FSP must appoint AML Compliance office, however, this is not mentioned in this SSGN. Mutual funds generally do not have staff in the Cayman, and delegate the AML compliance functions to the administrators Introduces uncertainty and increased cost into the process of registering new funds as well as significant potential costs for existing funds This paragraph should be deleted, as it runs contrary Regulation 3(2) of the AML Regulations and the ability to delegate all functions to, or rely on the internal controls of, certain service providers.	Agreed. Amendment will be made to reflect the wording in the AMLRs It is allowed to delegate to the administrators (MFAs) and the same will be reflected in the GN. Sector specific guidance is not intended to repeat each and every requirement. FSPs should refer to the AMLRs and General Guidance	Amended

	Alternatively, it should be made clear that the MLRO/DMLRO (and consequently the reporting) function can be delegated.		
I 7 Page 10 MONEY LAUNDERING/TERRORIST FINANCING WARNING SIGNS 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.)	It is common to launch a fund with seed capital. It is not necessarily industry standard to automatically do a source of funds check on a seed investor. If this is accepted as being a new procedure then this should be clearer in 1 C 2 (3) of this section above and not just a parenthetical at the end of I I (7). IN Part II and this part, the terms source of funds and source of wealth seems to be used interchangeably It is not common practice to determine how an investor earned their wealth to invest in a fund, however, a standard practice to verify source of funds Request clarity in the GNs that there is no expectations for FSPs in the funds context to understand the nature of how an investor earned their wealth to invest	No change to c 2 (3) at this time – information on source on funds is a key concept for AML and all FSPs and it is captured/referred to throughout in PART II (additional guidance can be considered in the next version/revision to the GNs if necessary. The Authority does not agree that the terms "source of funds" and "source of wealth" are used interchangeably. However, for the sake of clarity, we will include a definition of both in the Glossary based on FATF guidance. All FSPs, including funds, would normally be expected to obtain information on source of wealth in situations where an investor/ customer/applicant has been identified as high risk.	Amended
F 2(6)	Split boards are common in the investment funds	Agreed. Will be deleted	Deleted

	industry and often considered best practice – this should not be a red flag (or the point should be explained more clearly)		

Appendix A of the GN			
Section	**Industry comment**	**Authority's response**	**Consequent amendments to the draft GN**
General Observations			
	This section on who can be an EI appears to have been confused with who can be an acceptable applicant under reg 22 of the AMLRs. A publicly listed company, government entity or pension fund are not appropriate EIs. The 2015 GN state that EI should be someone who is bound by the AMLRs or who is regulated in an equivalent jurisdiction. Refer to Part to section 5 C 1, and E4	This list reflects regulation 22 of the AMLRs	None