



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

Issued by the Cayman Islands Monetary Authority
Pursuant to section 34 of the Monetary Authority Law (2018 Revision)

These Guidance Notes amend the Guidance Notes issued on December 13, 2017
(the "GN of December 13, 2017")

November 2018

This document is intended to provide general guidance to Financial Service Providers ("FSPs"). It should therefore, not be relied upon as a source of law. Reference for that purpose should be made to the appropriate statutory provisions. However, FSPs should be aware of the enforcement powers of the Supervisory Authorities under the Anti-Money Laundering Regulations (2018 Revision) ("AMLRs") and amendments thereto as they relate to supervisory or regulatory guidance.

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1. These Guidance Notes may be cited as the Guidance Notes (Amendment), 2018.
2. The GNs of December 13, 2017 are amended in **Part II**, as follows:
 - (1) in Section 2.C., by deleting paragraph **8** and replacing it with the following new paragraph **8**, and adding the following a new sub-section with paragraphs 9 through 14:

“8. According to the AMLRs, an FSP must designate a natural person at the managerial level as its AMLCO. However, either subsequent to or at the time of such designation the FSP may choose to delegate the performance of the compliance function to a person or rely on a person to perform the compliance function. In any event, FSPs shall not contract or transfer their compliance obligations under the AMLRs. As such, irrespective of whether the AMLCO is an employee and the FSP is performing the function on its own, or has delegated the performance of the compliance function to a person or relied on a person to perform the compliance function, the FSP is ultimately responsible for complying with the applicable AML/CFT obligations. Guidance on provisions in relation to reliance and delegation arrangements is provided in the below paragraphs.

Reliance/Delegation – AML/CFT Functions

9. The AMLRs allow FSPs to rely on a person to perform any function required to be formed or delegate the performance of any function to a person. Irrespective of entering into a reliance or a delegation arrangement (for the performance of any function), the FSP is ultimately responsible for compliance with the applicable requirements under the AMLRs.

10. It is a general understanding of the Authority that a person on whom reliance is being placed would apply its own procedures to perform the function in question, which is in contrast with delegation scenario. Under a delegation scenario, the delegate would usually perform the function in accordance with the FSP’s procedures and is subject to the FSP’s control of the effective implementation of those procedures by the delegate.

11. For example, delegation occurs in the instance where an FSP has drafted its own policies and procedures, which are then undertaken by a person on the FSP’s behalf to perform the function to the FSP’s exact specifications. In a reliance scenario, an FSP will assess the AML/CFT and other relevant policies and procedures of a person (on whom the FSP intends to rely to perform the function). Where the FSP is satisfied that the person’s policies and procedures would enable the FSP to comply with the AML/CFT obligations of the Cayman Islands then the FSP may rely on the person to perform the function using the person’s policies and procedures.

12. Since, the person on whom reliance is placed applies its own policies and procedures to perform the function, the FSP should ensure

that the person's policies and procedures are consistent with the FSP's nature of business, and are adequate to comply with the applicable regulatory requirements. Where an FSP chooses to rely on a person for the performance of the compliance or any other function, the FSP shall:

- (1) ensure that the person on whom reliance is being placed has adequate and appropriate knowledge and expertise to perform the function;
- (2) conduct a risk assessment of the person before entering into an agreement with the person upon whom reliance is to be placed and, where the person operates from a country outside the Cayman Islands, the FSP must document and demonstrate its considerations for country risk;
- (3) have a formalised agreement with the person on whom reliance is being placed, setting out the responsibilities of each party;
- (4) review policies and procedures of the person prior to entering into the reliance agreement and test them, from time to time, subsequent to entering into the relationship to ensure that the policies and procedures are adequate to perform the function and satisfy the relevant obligations in the Cayman Islands; and
- (5) ensure that the person adopts the Cayman Islands standards in relation to the performance of the function (for which reliance is being placed), where the person operates from a country outside the Cayman Islands in which the relevant standards are lower when compared to the Cayman Islands.

13. An FSP should ensure that the person on whom reliance is being placed has the capability to perform the function efficiently. Where the risks associated (with placing reliance on the person for the performance of the function) cannot be effectively managed or mitigated, the FSP shall not rely on the person for the performance of the function."

14. In the case of an FSP who chooses to delegate the performance of the compliance function to a person, reference should be made to the guidance on delegation principles provided under Part II, section 10 C ("Outsourcing") of the Guidance Notes.

- (2) in Section 4.B., by deleting paragraphs **65** and **66**, and replacing them with the following new paragraph **65**:

"65. Delegation or sub-delegation of the performance of the compliance or any other function to a person(s) should be in accordance with the principles set out in Section 10 C ("Outsourcing") of the Guidance Notes.

- (3) in Section 4.B., by deleting paragraph **67** and replacing it with the following new paragraph **66**:

"66. Where a (managed) FSP is relying on a person for the performance of any function, the (managed) FSP should adopt the principles set out in Section 2C (under the sub-heading "Reliance/Delegation – AML/CFT Functions") of Part II of the GNs. But, if a (managed) FSP is relying on an Eligible Introducer ("EI") as allowed under regulation 25 of the AMLRs, then the (managed) FSPs should adopt the principles set out under Section 5 E. ("Procedure for Introduced Business") of the Guidance Notes."

- (4) in Section 5., by deleting paragraph **D** and replacing it with the following new paragraph **D**:

"D. 1. As provided for in regulation 23 of the AMLRs, where a person carrying out relevant financial business- (1) has assessed a low level of risk; (2) has identified a customer/applicant, and the beneficial owner (where applicable); and (3) has no reason to doubt those identities, and

- (a) the circumstances are such that payment is to be made by the customer/applicant; and
- (b) it is reasonable in all the circumstances (i) for payment to be delivered by post, in person, or by electronic means to transfer funds; or (ii) for the details of such payment to be confirmed via telephone or other electronic means; then,

verification of the identity of a customer/applicant is not required at the time of receipt of payment, if the payment is debited from an account held (whether solely or jointly) in the name of the customer/applicant at a licensee under the BTCL or at a bank that is regulated in and- (i) either based or incorporated in, or (ii) formed under the laws of a country specified in the AMLSG List.

2. As such, in the circumstances outlined in 1 above, the FSP may defer the verification of the applicant's/customer's identity at that time. The FSP should however, have evidence- (1) identifying the branch or office of the Bank; and (2) verifying that the account is in the name of the applicant/customer.

3. When a payment meets the criteria for the simplified measures set out in 1 above, in addition to the details of the relevant branch or office of the bank and the account name, a record should be retained indicating how the transaction arose.

4. However, such simplified measures are not allowed:

- (1) if the circumstances of the payment give rise to knowledge, suspicion, or reasonable grounds for knowing or suspecting that

the applicant/customer is engaged in ML/TF, or that the transaction is carried out on behalf of another person engaged in ML/TF;

- (2) if the payment is made by a person for the purpose of opening a relevant account with a licensee under the BTCL in the Cayman Islands; and
- (3) in relation to the applicant/customer, when an onward payment is to be made to the applicant/customer or any other person (including the beneficial owner).

5. In the circumstances set out in paragraph 4, the verification of identity must be conducted in accordance with the CDD procedures as outlined in Section 4 of this part of the Guidance Notes before the payment of any proceeds, unless such payment of the proceeds are to be made to a person for whom a court is required to adjudicate payment (e.g. trustee in bankruptcy, a liquidator, a trustee for an insane person or a trustee of the estate of a deceased person)."

- (5) in Section 9.B., by deleting paragraph **2** and replacing it with the following new paragraph **2**:

"2. The FSP should ensure that the person acting as MLRO/DMLRO:

- (1) is a natural person;
- (2) is autonomous (meaning the MLRO is the final decision maker as to whether to file a SAR);
- (3) is independent (meaning no vested interest in the underlying activity);
- (4) has and shall have access to all relevant material in order to make an assessment as to whether the activity is or is not suspicious; and
- (5) can dedicate sufficient time for the efficient discharge of the MLRO function, particularly where the MLRO/DMLRO has other professional responsibilities.

- (6) in Section 9.B., by deleting paragraph **6** and replacing it with the following new paragraphs **6** and **6A**:

"6. It is recognised that it is possible that an FSP may not have employees in the Cayman Islands and it may not be possible for a senior member of staff (or a sole trader him/herself) to be the MLRO/DMLRO. In these circumstances, the FSP should identify a person that meets the criteria set out in B 2 above and designate that person as an MLRO/DMLRO.

6A. After designating an MLRO/DMLRO, the FSP may choose to delegate the performance of the MLRO function to a person or rely on a person to perform the MLRO function in accordance with regulation

3(2) of the AMLRs. See Part II, Section 10. C. ("Outsourcing") for guidance on delegation; and Part II, Section 2. C. 8C for guidance on placing reliance on third parties."

3. The GNs of December 13, 2017 are amended in Part **VI**, as follows:

(1) in Section 1., by deleting paragraph **G** and replacing it with the following new paragraphs **G**:

G General

- "1. Regulated Mutual Funds and Mutual Fund Administrators must have policies and procedures in place as required by the AMLRs. These shall include policies and procedures to- (1) identify and report suspicious activity; (2) monitor and ensure compliance with AML/CFT legislative and regulatory requirements; and (3) test the efficacy and efficiency of their AML/CFT systems and update such systems, if necessary, to comply with their AML/CFT obligations (the "Procedures").
2. Both Mutual Funds and their Mutual Fund Administrators subject to the AMLRs have separate obligations to maintain and implement such Procedures in respect of their relevant financial business.
3. The ultimate responsibility for maintaining and implementing adequate Procedures and complying with the applicable AML/CFT obligations remains with the Mutual Funds and Mutual Fund Administrators.
4. Mutual Funds and Mutual Fund Administrators may meet their obligations in relation to their Procedures by either- (1) implementing their Procedures directly; (2) delegating the performance of the Procedures to a person; or (3) relying on a person to perform the Procedures.
5. Where an FSP that is a Mutual Fund or Mutual Fund Administrator chooses to delegate the performance of the Procedures to a person, the FSP should adopt the principles set out in Part II, Section 10. C. ("Outsourcing").
6. Similarly, where an FSP that is a Mutual Fund or Mutual Fund Administrator chooses to rely on a person for the performance of the Procedures, the FSP should adopt the principles set out in paragraphs 1 through 5 under 8C of Part II, Section 2. C.
7. The operators of the Mutual Funds or Mutual Fund Administrators should document, either as a board resolution or other appropriate documentation (such as a supplement/update to existing policies and procedures or detailed appendix to an existing agreement, in the case of an delegation or reliance arrangement), the manner in which the FSP has met its obligation to maintain and implement Procedures.

Mutual Funds

8. All Mutual Funds must designate a natural person as their MLRO/DMLRO¹. After such designation, Mutual Funds may choose to delegate the performance of this function to their mutual fund administrator or any other service provider, or rely on their mutual fund administrator or any other service provider to perform this function. Where a Mutual Fund chooses to delegate the performance of the function to a person, the Mutual Fund should adopt the principles set out in Part II, Section 10. C. ("Outsourcing"). Similarly, where a Mutual Fund chooses to rely on a person for the performance of the function, the Mutual Fund should adopt the principles set out in paragraphs 1 through 5 under 8C of Part II, Section 2. C.

Mutual Fund Administrators

9. A Mutual Fund Administrator must designate a natural person as their MLRO/DMLRO. After such designation, the Mutual Fund Administrator may choose to delegate (or sub-delegate where the Mutual Fund Administrator is a delegate) the performance of the MLRO/DMLRO function to a person, or rely on a person to perform the function. Further, a Mutual Fund Administrator may also choose to delegate/sub-delegate the performance of the Procedures to a person(s) or rely on a person(s) to perform the Procedures. Where a Mutual Fund Administrator chooses to delegate/sub-delegate the performance of the Procedures or any function to a person, the Mutual Fund Administrator should adopt the principles set out in Part II, Section 10. C. ("Outsourcing"). Similarly, where a Mutual Fund Administrator chooses to rely on a person for the performance of the Procedures or any function, the Mutual Fund Administrator should adopt the principles set out paragraphs in 1 through 5 under 8C of Part II, Section 2. C."

¹ See Regulation 33 of the AMLRs (2017). For relevant guidance see Section 9 of the Guidance Notes