

# CAYMAN ISLANDS MONETARY AUTHORITY

## PRIVATE SECTOR CONSULTATION



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

#### A. Introduction

1. Section 34(1)(a) of the Monetary Authority Law (2016 Revision) (as amended) ("MAL") states that –

After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may –

- (a) *issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;*
- (b) issue or amend statements of guidance concerning the requirements of the money laundering regulations or the provisions of the regulatory laws; and
- (c) issue or amend rules or statements of principle or guidance to reduce the risk of financial services business being used for money laundering or other criminal purposes.

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

*When this Law requires private sector consultation in relation to a proposed measure –*

- (a) *the Authority shall give to each private sector association a draft of the proposed measure, together with –*
  - (i) *an explanation of the purpose of the proposed measure;*
  - (ii) *an explanation of the Authority's reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6;*
  - (iii) *an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
  - (iv) *an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
  - (v) *notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less*

*than thirty days or such shorter period as may be permitted by subsection (3));and*

*(d) before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.*

3. The Cayman Islands Monetary Authority ("the Authority") seeks consultation and comment from the private sector associations concerning the revised "Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands" ("Guidance Notes") that will replace the Guidance Notes issued in August 2015.

## **B. Background**

4. The Financial Action Task Force issued its revised 40 Recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation in 2012 (the "Recommendations"). In keeping with the updated Recommendations, each country is required to conduct an evaluation of the Money Laundering ("ML") and Terrorist Financing ("TF") risks that the jurisdiction faces i.e. a national risk Assessment ("NRA"). The ML and TF NRA revealed that, notwithstanding the results of prior mutual assessment by the Caribbean Financial Action Task Force ("CFATF"), as a result of the revised and enhanced standards of the 2012 FATF Recommendation, the Cayman Islands Anti-Money laundering ("AML") and Countering the Financing of Terrorism ("CFT") framework was inadequate and laws, regulations, guidance and supervisory practices needed to be amended.
5. The Money Laundering Regulations (2015 Revision) were repealed and replaced by the Anti-Money Laundering Regulations, 2017 ("AMLRs") which were gazetted on 20 September 2017 and come into force on 2 October 2017. Consequently the Guidance Notes, which are intended to assist Financial Services Providers ("FSPs") in applying national AML/CFT measures, and in particular, in detecting and reporting suspicious activities measures also need to be updated. The Guidance Notes represent the Authority's minimum expected standards as it relates to the interpretation and application of national AML/CFT measures.
6. The revised GNs consist of three Parts and Appendices with Part 1 setting out the overarching AML/CFT framework of the Cayman Islands; Part II setting out general AML/CFT guidance arranged to correspond with the "Parts" of the AMLRs; and Part III setting out the revised Sector Specific AML/CFT guidance.
7. Part I of the revised GNs has 2 sections that essentially revise and replace sections 1 and 2 of the August 2015 GNs. Part 1 Section 1 sets out the Purpose and Scope of the GNs and General Matters while Part 1 Section 2 sets out the Cayman Islands specific Legislative and Regulatory Framework including "Outline of the Offences" and "Outline of the Defenses". Part I, amongst other changes, also incorporated new and revised text on a key theme in the revision of the GNs which was the enhancement of, and insertion of specific language relating to, the Risk Based Approach ("RBA") including references to the National Risk Assessment "NRA").

8. Part II of the revised GNs as previously noted has been arranged to correspond with the "Parts" of the AMLRs. Key revisions to the August 2015 GNs (and the ALMRs) include:
  - (1) A section (3) on Assessing Risk and Applying a Risk Based Approach;
  - (2) Increased emphasis on compliance program (including duties of a AMLCO);
  - (3) Enhanced and or more explicit provisions relating to SCDD and ECDD; and
  - (4) New or enhanced guidance relating to Politically Exposed Persons, Shell banks and Correspondent Banks.
9. The Appendices to the GNs have also been significantly simplified for efficiency and now includes key forms and charts to guide and assist industry. The AMLRs are no longer included as an appendix to the GNs, so as to avoid the GNs themselves being unnecessarily cumbersome.

**C. Purpose of Proposed Measure and Consistency with the Authority's Functions**

10. This proposal is consistent with section 6 of the Monetary Authority Law which states:

*Section 6(1) of the MAL provides that the principal responsibilities of the Authority include its regulatory functions, inter alia, "to monitor compliance with the money laundering regulations."*

*Section 6(3) of the MAL provides that in performing its regulatory functions, the Authority shall, inter alia,*

  - (b) *endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;...*
  - (f) *recognise the need for transparency and fairness on the part of the Authority.*

**D. International Standards**

11. The FATF Recommendation set the international standard, which countries should implement through measures adapted to their particular circumstances, for a comprehensive and consistent framework of measures to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. It has been acknowledged that countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats. In addition to laws and regulations, Guidance Notes or Codes are a common accepted measure adopted internationally.

**E. Jurisdictional Comparison**

12. Since the FATF issued the revised Recommendation in 2012 many jurisdictions and international or regional associations have issued amended or upgraded

Guidance Notes or Codes to supplement AML / CFT laws and regulations. Such countries and organisations include:

Jersey Financial Services Commission	HANDBOOK FOR THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM	Issued January 2015 and updated March 2015
Isle of Man Financial Services Authority	Anti-Money Laundering and Countering the Financing of Terrorism Handbook	July 2017
Bermuda Monetary Authority	Guidance Notes for AML / ATF Regulated Financial Institutions on Anti-Money Laundering and Anti-Terrorist Financing	September 2016

#### **F. Significant Costs and Benefits**

13. The table below shows the estimated costs and benefits of the proposed amendment to the GNs:

	<b>Costs</b>	<b>Benefits</b>
<b>CIMA</b>	<ol style="list-style-type: none"> <li>1. Initial cost of amending the GNs (including consultation)</li> <li>2. CFATF Stakeholder Dialogue (seminar) – AMLRs / Guidance Notes</li> <li>3. Queries from financial services providers about the changes to the Guidance Notes.</li> </ol>	<ol style="list-style-type: none"> <li>1. Compliance with new/ revised AML/CFT international standards</li> <li>2. FSPs Compliance with new/ revised Cayman Islands AML/CFT legislation</li> <li>3. Increased transparency for industry regarding the new AML/CFT framework (including RBA)</li> </ol>
<b>Cayman Islands</b>	<ol style="list-style-type: none"> <li>1. None/unknown</li> </ol>	<ol style="list-style-type: none"> <li>1. Enhanced reputation</li> </ol>
<b>Regulated Entities</b>	<ol style="list-style-type: none"> <li>1. Costs (resources) to review and provide comments to consultation and become familiar with revised Guidance Notes</li> <li>2. Costs to implement enhancements to policies and procedures, systems and controls to ensure compliance with updated Guidance Notes</li> <li>3. Staff training for new Guidance Notes</li> </ol>	<ol style="list-style-type: none"> <li>1. Compliance with new/ revised Cayman Islands AML/CFT legislation</li> <li>2. Improved risk management policies and procedures, systems and controls</li> </ol>

#### **G. Comments and Consultation**

14. The Authority seeks consultation through written comments and representations from the private sector associations concerning the *Guidance notes on the prevention and detection of money laundering and terrorist financing in the Cayman Islands*.

15. The Authority must receive representations by 1700hrs on November 29<sup>th</sup>, 2017.

16. Comments and representations must be addressed to:

The Managing Director  
Cayman Islands Monetary Authority  
P.O. Box 10052  
80e Shedden Road  
Elizabethan Square  
Grand Cayman KY1-1001  
Cayman Islands  
Tel: 345-949-7089  
Fax: 345-946-5611  
Email:

[Consultation@cmoney.com.ky](mailto:Consultation@cmoney.com.ky)

and copied to [[a.mondesir@cmoney.com.ky](mailto:a.mondesir@cmoney.com.ky); [m.scott@cmoney.com.ky](mailto:m.scott@cmoney.com.ky);

[P.Namburi@cmoney.com.ky](mailto:P.Namburi@cmoney.com.ky)]

17. The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.

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