

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 (2018 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" or "CIMA") seeks consultation and comments from the private sector associations concerning the following:
 - (a) Amendments to the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands December 13, 2017 ("amendments to the Guidance Notes").
- 4. The proposed amendments to the Guidance Notes are attached as Appendix1.

B. Background

- 5. In October 2017, the Money Laundering Regulations were revised and replaced by the Anti-Money Laundering Regulations, 2017 ("AMLRs"). This was to comply with the Financial Task Force recommendations and to address the technical compliance gaps identified in the country's anti-money laundering and counter terrorist financing ("AML/CFT") regime during the National risk assessment.
- 6. Consequently, to provide guidance on the AMLR provisions, the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands" issued in August 2015 were revised and issued for consultation. These were then further revised to address comments and concerns received through the consultation process and issued on December 13, 2017 ("December 13, 2017 Guidance Notes").
- 7. There were, however, a few issues raised during the consultation process which required in-depth analysis and research. Since, the AMLRs were already in force there was an urgent need for guidance to be provided to the industry regarding the operations of the new AMLRs. As such, the Authority set the matters that needed in-depth analysis and research aside for further and more focused consideration and issued the December 13, 2017 Guidance Notes. Subsequent to the issue of the December 13, 2017 Guidance Notes the Authority received additional input and comments from industry participants.
- 8. To address the outstanding issues raised during the consultation process and deal with the subsequent issues and concerns raised by industry, the Authority has through additional research, and careful consideration and analysis of the issues, drafted the proposed amendments to the December 13, 2017 Guidance Notes which are discussed below. These are set out in the attached Appendix 1.

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

9. The December 13, 2017 Guidance Notes, which represent the Authority's minimum expected standards as it relates to the interpretation and application of national AML/CFT measures, are intended to assist Financial Services Providers ("FSPs") in their application of national AML/CFT measures and in detecting and reporting suspicious activities. The proposed amendments to the Guidance Notes provide additional guidance in that regard, and clarity on certain provisions of the December 13, 2017 Guidance Notes to address the specific concerns raised by industry participants.
10. The proposed amendments to the December 13, 2017 Guidance Notes will clarify the requirements in relation to the designation of a Money Laundering Reporting Officer ("MLRO") and deputy MLRO ("DMLRO"), and provide guidance on the delegation and reliance permitted under regulation 3(2) of the AMLRs. Similar guidance will also be provided for mutual funds and mutual fund administrators in Part VI of the December 13, 2017 Guidance Notes. Further, the proposed amendments seek to explain the terms 'reliance' and 'delegation' as the Authority's expectation in relation to each.
11. The proposed amendments also aim to eliminate the confusion caused by the use of the term 'gap analysis' and provide guidance on the principles to be applied by FSPs when placing reliance on an Eligible Introducer for conducting verification of a customer. Additionally, the proposed amendments seek to provide clarity with respect to the requirements of regulation 23 of the AMLRs.
12. Given the objectives set out above, the Authority is of the view that the proposal is compatible with its functions and duties under section 6 of the MAL. Furthermore, the Authority has, in developing the December 13, 2017 Guidance Notes and these proposed amendments, carefully sought to ensure that these Guidance Notes are consistent with the AMLRs as well as consistent with its legal obligations. Specifically, in order to "act in the best economic interest of the Islands", to "promote and maintain a sound financial system .." and "to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre", the Authority is convinced that the December 13, 2017 Guidance Notes and the proposed amendments to them, must be sufficiently robust in order to reasonably address the economic effects or harm (or potential harm) caused by money laundering¹.
13. The December 13, 2017 Guidance Notes as currently drafted are, in the Authority's view, reasonably balanced or proportionate (to the extent possible by the ALMRs) to take into account the increased burden of compliance by

¹ E.g. The competitive advantage of money laundering front companies over legitimate businesses (without illegally subsidised funding); tarnishing of a jurisdiction's (or its financial institutions) reputation in a competitive and global economy; loss of control of economic policy by governments. Also of note is the International Monetary Fund recent statement/ factsheet: <http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism>

FSPs while achieving the benefits and goals set out in the above paragraph and the reduction of financial crime and damage to the economy. As the issue of these Guidance Notes is subject to the consultation requirements of the MAL, the Authority is of the view that it has also recognized “the need for transparency and fairness on the part of the Authority”. The Authority has done so by, among other things, carefully considering and responding to the issues raised by industry participants through the consultation process, and further by applying detailed attention, addressing and responding to the specific issues and concerns raised subsequent to the consultation process.

E. Jurisdictional Comparison in relation to the appointment of an MLRO

14. The proposed amendments to the December 13, 2017 Guidance Notes mainly seek to provide clarity in relation to the interpretation of certain provisions of the AMLRs and the related guidance in the December 13, 2017 Guidance Notes. Therefore, no in-depth review of the relevant practices in other jurisdictions is considered necessary in order to propose the said amendments. However, in recognition of industry participants’ interest in understanding the requirements relating to the appointment of an MLRO/DMLRO, the following paragraph presents a brief jurisdictional comparison.
15. The AMLRs require a person carrying out relevant financial business (“RFB”) to designate a natural person as an MLRO. Further, the AMLRs allow RFBs to delegate the performance of the MLRO function to a person or allow relying on a person for the performance the MLRO function. The jurisdictional review reveals that jurisdictions such as the Isle of Man, Bermuda, Guernsey, and the UK have requirements similar to those of the Cayman Islands in respect to the need to appoint a reporting officer who should be an individual. With respect to the requirements regarding outsourcing the MLRO role, these jurisdictions have adopted different approaches. Bermuda clearly specifies that the MLRO should be a staff member, but the MLRO functions may be delegated to an appropriately qualified individual within the entity’s group. Additionally, whereas in Guernsey, outsourcing is allowed, the UK explicitly restricts entities from using consultancy services for this purpose.

F. Significant Costs and Benefits

16. The proposed amendments are intended to provide clarity on certain provisions of the AMLRs, but not to impose any new requirements. Therefore, it is not expected that there will be significant costs incurred to implement the proposed amendments. However, there could be costs associated with the implementation of the relevant provisions of the AMLRs. The table below shows the estimated costs and benefits of the proposed amendments to the Guidance Notes.

Table – Estimated costs and benefits of the proposed amendments to the Guidance Notes

	Costs	Benefits
<i>CIMA</i>	<ol style="list-style-type: none"> 1. Consideration of (review, analysis & research regarding) queries and comments from financial services providers regarding certain provisions of the December 13, 2017 Guidance Notes (including the outstanding matters from previous consultation). 2. Conduct consultation. 3. Gazette and publication of the (proposed) amendments to the December 2017 Guidance Notes. 	<ol style="list-style-type: none"> 1. Eliminates confusion in relation to certain provisions of the AMLRs and the December 2017 Guidance Notes (e.g. Requirement to appoint a natural person as an MLRO). 2. Addresses the concerns raised by the private sector and provides clarity on certain requirements (such as the requirement to conduct gap analysis and the requirements under the regulation 23 of the AMLRs). 3. Enhanced guidance and transparency for industry. 4. FSPs' increased compliance with the AMLRs and the Guidance Notes.
<i>Cayman Islands</i>		<ol style="list-style-type: none"> 1. Protection of positive reputation of the jurisdiction. 2. Reduced ML/TF risks as a result of the better understanding of the AML/CFT obligations and increased compliance by FSPs.
<i>Regulated Entities</i>	<ol style="list-style-type: none"> 1. Costs (resources) to review and provide comments to the consultation. 2. Potential costs to make enhancements to policies and procedures, systems and controls to ensure compliance with the December 2017 Guidance Notes (and the proposed amendments). 3. Staff training on the amendments to the Guidance Notes (one time cost). 	<ol style="list-style-type: none"> 1. Enhanced guidance and clarity on certain provisions of the AMLRs and the December 2017 Guidance Notes. 2. Certainty on the AML/CFT obligations and the acceptable AML/CFT systems and practices. 3. Increased compliance with the revised AML/CFT obligations. 4. Improved risk management systems and controls due to the enhanced guidance on certain concepts such as 'reliance'. 5. Enhanced business practices and AML/CFT framework.

G. Comments and Consultation

17. The Authority seeks consultation through written comments and representations from the private sector associations concerning the proposed amendments to the December 13, 2017 Guidance Notes.
18. The Authority must receive representations by 1700hrs on July 4, 2018.
19. 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@cimoney.com.ky

and copied to [a.mondesir@cimoney.com.ky; P.Namburi@cimoney.com.ky]

20. 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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