

CAYMAN ISLANDS MONETARY AUTHORITY

PRIVATE SECTOR CONSULTATION



**2019 AMENDMENTS TO THE GUIDANCE NOTES ON THE PREVENTION AND
DETECTION OF MONEY LAUNDERING AND TERRORIST FINANCING IN THE
CAYMAN ISLANDS OF DECEMBER 13, 2017
TARGETED FINANCIAL SANCTIONS**

A. Introduction

1. Section 34(1)(c) of the Monetary Authority Law (as amended) ("MAL") states:

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

(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*

(b) 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 comment from the private sector associations concerning the proposed amendments to the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands of December 13, 2017 ("GNS") relating to Targeted Financial Sanctions ("TFS") (attached as Appendix A).

B. Background

4. In December 2017, the Caribbean Financial Action Task Force ("CFATF") assessed the framework for Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) in the Cayman Islands against the Financial Action Task Force's 40 Recommendations and 11 Immediate Outcomes ("FATF Recommendations"). The CFATF's mutual evaluation report ("MER") was published on March 18, 2019.
5. The Cayman Islands received a rating of Moderate on the recommendations relating to TFS. The main criticisms were related to:
 - (1) the industry not understanding the difference between their obligation under the sanctions regime as opposed to money laundering ("ML")¹; and
 - (2) the Cayman Islands not having identified funds or assets of persons subject to TFS.

C. International Standards

6. Recommendation 6 of the FATF Recommendations requires each country to implement the TFS regimes to comply with the United Nations Security Council resolutions ("UNSCRs" or "resolutions") relating to the prevention and suppression of terrorism and terrorist financing ("TF"). Recommendation 6 is intended to assist countries in implementing the TFS contained in the UNSCRs relating to the prevention and suppression of terrorism and TF.
7. These resolutions require countries to freeze, without delay, the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either (i) designated by, or under the authority of, the United Nations Security Council (the Security Council) under Chapter VII of the Charter of the United Nations, including in accordance with the Al-Qaida/Taliban sanctions regimes⁴; or (ii) designated by that country or by a supra-national jurisdiction pursuant to UNSCR 1373. Such measures may be either judicial or administrative in nature.
8. Immediate Outcome ("IO") 10 states: "Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector."

¹ *Cayman Islands Mutual Evaluation Report*. CFATF. (2019) paragraph 288

9. The characteristics of an effective system call for “[t]errorists, terrorist organisations and terrorist support networks [to be] identified and deprived of the resources and means to finance or support terrorist activities and organisations. This includes proper implementation of [TFS] against persons and entities designated by the United Nations Security Council and under applicable national or regional sanctions regimes. [Countries should have] a good understanding of the TF risks and take appropriate and proportionate actions to mitigate those risks, including measures that prevent the raising and moving of funds through entities or methods which are at greatest risk of being misused by terrorists. Ultimately, this reduces TF flows, which would prevent terrorist acts. This outcome relates primarily to Recommendations 1, 4, 6 and 8, in addition to elements of Recommendations 14, 16, 30 to 32, 37, 38 and 40.”²
10. Core issue 10.1 of IO 10 assesses: “how well is the country implementing [TFS] pursuant to (i) UNSCR1267 and its successor resolutions, and (ii) UNSCR1373 (at the supra-national or national level, whether on the country’s own motion or after examination, to give effect to the request of another country)? To what extent are terrorists, terrorist organisations and terrorist financiers deprived (whether through criminal, civil or administrative processes) of assets and instrumentalities related to TF activities?”
11. Immediate Outcome 11 states: “Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs”.
12. The characteristics of an effective system is measured by “persons and entities designated by the UNSCRs on proliferation of weapons of mass destruction (WMD) are identified, deprived of resources, and prevented from raising, moving, and using funds or other assets for the financing of proliferation, [TFS] are fully and properly implemented without delay; monitored for compliance and there is adequate co-operation and co-ordination between the relevant authorities to prevent sanctions from being evaded, and to develop and implement policies and activities to combat the financing of proliferation of WMD.”²
13. In the CFATF mutual evaluation assessment, the Cayman Islands achieved a rating of moderate in respect of IO 10 and IO 11.
14. In reference to IO 10, the MER stated that:
 - (1) “The Cayman Islands should implement timely communication mechanisms for TFS relating to TF to facilitate the freezing of assets without delay by FIs and DNFBPs.
 - (2) CIMA should enhance its supervisory approach to the implementation of sanctions relating to TF as well as testing the promptness of the mechanism implemented by FIs and DNFBPs to update the lists used once designations take effect.
 - (3) All reporting entities should be required to conduct ongoing regular customer monitoring as appropriate to proactively identify assets subject to sanction.

² *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems*. FATF. (2019)

- (4) Staff training within FIs and DNFBNs should be increased to ensure proper and efficient identification of persons and assets subject to TFS, as well as the processes to be followed where such persons and assets are identified.
 - (5) The jurisdiction should build upon the TFS Industry Guidance issued in December 2017, and conduct more outreach so that FIs and other persons or entities, including DNFBNs, that may be holding targeted funds or assets, are aware of their obligations in taking actions under freezing mechanism when assets subject to TFS are identified."
15. In reference to IO 11, the MER stated, amongst other things, that:
- (1) "All reporting entities should conduct ongoing regular customer monitoring as appropriate to proactively identify assets subject to sanction. Increasing staff training within FIs and DNFBNs to ensure proper and efficient identification of persons and assets subject to TFS, as well as the processes to be followed where such persons and assets are identified.
 - (2) The Cayman Islands should review its co-operation and co-ordination mechanisms to ensure that the authorities can identify potential breaches or violations of TFS related to proliferation financing ("PF")."

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

16. Section 6(1)(b) of the MAL establishes the responsibilities of the Authority with respect to its regulatory functions, namely:
- (i) to regulate and supervise financial services business carried on in or from within the Islands in accordance with this Law and the regulatory laws;*
 - (ii) to monitor compliance with the money laundering regulations; and*
 - (iii) to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law;*
17. Section 6(3) of the MAL provides that in performing its regulatory functions, the Authority shall, *inter alia* –
- (a) endeavour to promote and enhance market confidence and the reputation of the Islands as a financial centre;*
 - (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;*
 - (...)*
18. The proposed addition to the GNs seeks to rectify the deficiencies noted in the MER relating to TFS. The proposed additions include the following:
- (1) Definitions and general discussion of the concepts relating to TFS;

- (2) Highlight the relevant sanctioning bodies and applicable sanctions within the Cayman Islands;
- (3) Identifying the Authorities responsible for the TFS regime in the Cayman Islands;
- (4) The responsibilities of FSPs in achieving compliance with the GNs, including:
 - a. implementation of a comprehensive compliance programme;
 - b. development and implementation of training and internal controls;
- (5) The obligations of FSPs to monitor the consolidated list maintained by the United Kingdom Office of Financial Sanctions Implementation as well as domestic designations made by the Governor of the Cayman Islands; and
- (6) Reporting obligations to competent authorities.

E. Jurisdictional Comparison

19. Financial services regulators in comparable jurisdictions have issued guidance to regulated entities on TFS. In drafting the proposed amendments to the GNs, the Authority considered guidance issued by the Jersey Financial Services Commission, Isle of Man Financial Services Authority and the Central Bank of Ireland. The Authority also took into consideration the FATF Guidance on TFS related to Terrorism and TF (Recommendation 6). Table 1 depicts the elements in place in each jurisdiction (as well as the proposed GNs amendment).

Table 1 – Jurisdictional Comparison for Target Financial Sanctions

	Isle of Man	Jersey	Ireland	Cayman Islands
Definition of TFS	X	X	X	X
Definition of Designated Persons	X	X		X
Description of Relevant Sanctions	X	X	X	X
Identification of Competent Authorities	X		X	X
Training and Internal Controls	X	X		X
Obligations of FSPs	X	X	X	X
Sanctions / Orders Monitoring		X	X	X
Asset Freezing / Freezing Mechanism	X	X	X	X
False Positives	X		X	X
Reporting Obligations	X	X	X	X
Unfreezing Assets				X
Exemptions and Licensing	X	X	X	X
Practical Tips		X		X
Typologies				
OFAC Sanctions	X	X		

F. Significant Costs and Benefits

20. The guidance on TFS clarifies existing requirements imposed by the Overseas Orders in Council and the Terrorism Law. As such, there should be no new compliance costs for regulated entities, assuming they are currently in compliance with these regulations.
21. Table 2 shows the estimated costs and benefits of the proposed amendments to the GNs.

Table 2 – Estimated Costs and Benefits of Proposed Amendments

	Costs	Benefits
<i>CIMA</i>	<ol style="list-style-type: none"> 1. Processing amendments and conducting consultation 2. Staff training 3. Conducting outreach to FSPs 4. Responding to FSP queries 5. Additional costs of monitoring compliance with new guidance 	<ol style="list-style-type: none"> 1. More clarity during onsite inspections, resulting in more consistency between regulated entities and more streamlined inspections and reports. 2. Savings of time when compared to responding to queries from individual institutions about their obligations
<i>Cayman Islands</i>	<ol style="list-style-type: none"> 1. The FRA will have additional costs relating to processing filings and streamlining guidance to the industry. 	<ol style="list-style-type: none"> 1. Increases the reputation of the jurisdiction, which may lead to more business being done in the Islands. 2. Reduction in processing times for the Financial Reporting Authority and other domestic criminal agencies, as the guidance clarifies freezing and reporting requirements 3. Facilitates the investigation and prosecution of offences 4. Enhances compliance of jurisdiction with FATF standards (particularly as it relates to IO10 and IO11), thereby reducing likelihood of appearing on blacklists and related consequences of blacklisting (including higher compliance costs and exclusion from certain countries and markets)
<i>Regulated Entities</i>	<ol style="list-style-type: none"> 1. Staff training on targeted financial sanctions. Many FSPs use automated sanctions 	<ol style="list-style-type: none"> 1. More clarity on obligations will reduce the time FSPs spend on deciding how to deal with

	Costs	Benefits
	<p>screening and would not incur additional software costs, however they may have additional costs relating to the review and screening of customer databases, time related to reporting to the FRA, implementing processes to freeze and unfreeze assets, and maintaining proper audit trails.</p> <ol style="list-style-type: none"> 2. Implementation of new systems and controls 3. Implementation of new forms, policies and procedures, including amending KYC/CDD forms and ongoing monitoring to include sanction elements 4. Time and cost to build expertise on proliferation indicators, including dual use goods and proliferation patterns 5. Costs to conduct due diligence on persons and entities newly rated as high risk. This cost depends on the number of such persons and entities 	<p>potential cases of sanctions violations</p> <ol style="list-style-type: none"> 2. Enable better preparation for onsite inspections 3. Reduces risk of regulated entity being used to facilitate financial crime, which could jeopardize the firm's reputation and potentially its ability to carry on business. 4. Improved risk management and information on customers could prevent institution from being used to commit financial crime

22. Given the hidden nature of ML/TF and PF, the task of estimating costs and benefits of the proposed guidance is challenging. Most AML/CFT monitoring tools/systems currently utilised by most FSPs have the screening capabilities for implementation of these requirements. New costs to be borne would relate mainly to asset freezing and reporting, which are considered to be minimal. The main system costs for new market entrants would be onetime costs.

23. There are also significant benefits for the jurisdiction if regulated entities implement the guidance and the jurisdiction faces potentially very severe risks if the guidance is not implemented. Thus, the benefits and avoidance of risks for the jurisdiction outweigh the costs for regulated entities.

G. Comments and Consultation

24. The Authority seeks consultation through written comments and representations from the private sector associations concerning:

2019 Amendments to the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands of December 13, 2017 – Targeted Financial Sanctions

25. The Authority must receive representations by 1700hrs on **Friday, November 15, 2019.**

26. Comments and representations must be addressed to:

The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052
SIX, Cricket Square
Grand Cayman KY1-1001
Cayman Islands
Tel: 345-949-7089
Fax: 345-946-5611
Email:
Consultation@cima.ky
and copied to AlisaGlace@cima.ky

27. 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.
