

UPDATE

Cayman amends AML/CFT Guidance Notes

The Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands have been amended. Additional clarity has been provided regarding certain requirements of the Cayman Islands' AML regime, particularly in relation to the outsourcing of compliance obligations.

Introduction

The Cayman Islands Monetary Authority (**CIMA**) has released the Guidance Notes (Amendment), 2018¹ (the **Amendment**), amending the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (the **Guidance Notes**) issued in December 2017². The Amendment provides clarification on certain requirements of the Anti-Money Laundering Regulations (2018 Revision) (the **AMLRs**) and the Guidance Notes in response to industry comments and consultation.

What changes have been made to the Guidance Notes?

Outsourcing compliance functions – delegation vs reliance

CIMA has provided an explanation of its understanding of the terms 'delegation' and 'reliance', and clarification of its expectations where a delegation or reliance arrangement is entered into by a Cayman Islands financial service provider (**FSP**), such as a regulated or unregulated investment fund.

With a 'delegation', the delegate performs the compliance function in accordance with the internal policies and procedures of the FSP, and not those of the delegate. The delegate would then be subject to the control of the FSP in ensuring the correct and effective implementation of those policies and procedures. Conversely, in a 'reliance' scenario, the person on whom reliance is being placed would perform the relevant function in accordance with that service provider's own policies and procedures. The FSP must be satisfied that those policies and procedures will enable it to comply with the requirements of the Cayman AML/CFT regime in order to rely upon them. Reliance is the method most commonly used by Cayman Islands investment funds to meet their compliance obligations.

Delegation

The delegation of a function should be conducted in accordance with the principles set out in Section 10C (Outsourcing) of Part II of the Guidance Notes, including the following:

- each FSP should maintain policies and procedures in relation to outsourcing;
- where an FSP proposes to outsource the compliance function (the role of AML Compliance Officer (**AMLCO**)) or the Money Laundering Reporting Officer (**MLRO**) or Deputy Money Laundering Reporting

¹ See https://www.cima.ky/upimages/commonfiles/GNAmendments2018_Dec-2018_1543867000.pdf

² See https://www.cima.ky/upimages/commonfiles/1513184321GuidanceNotesonthePreventionandDetectionofMoneyLaunderingandTerroristFinancingintheCaymanIslands_1513184322.pdf

Officer (**DMLRO**) position, a risk assessment (including country risk) should be conducted prior to entering into the arrangement;

- the FSP must conduct due diligence on the proposed service provider, to ensure that the service provider is fit and proper to perform the function in question;
- the outsourcing/service agreement must:
 - clearly set out the parties' obligations;
 - require regular reporting by the service provider to the FSP and ensure that the FSP has access to all information and documentation maintained by the service provider in relation to the outsourced function(s);
 - require the service provider to file a suspicious activity report (**SAR**) with the Cayman Islands Financial Reporting Authority if a suspicion arises during the performance of the outsourced activity;
 - if sub-contracting is permitted, require that the service provider follows outsourcing standards equivalent to those imposed on the FSP; and
 - not be likely to impede access to data without delay due to the imposition of confidentiality, secrecy, privacy or data protection restrictions;
- the FSP should have a contingency plan and an exit strategy in place in case the service provider fails to perform the outsourced function as agreed; and
- where the service provider (or a sub-contractor) operates from a jurisdiction with anti-money laundering (**AML**) and counter the financing of terrorism (**CFT**) standards lower than those of the Cayman Islands, the service provider (and any sub-contractor) must adopt and apply the Cayman Islands standards.

The Guidance Notes also refer FSPs to CIMA's Statement of Guidance on Outsourcing³ for further guidance.

Reliance

Where an FSP will rely on a third party to fulfil any AML/CFT function, it is required to:

- ensure that the service provider's policies and procedures are consistent with the nature of the FSP's business and are adequate to comply with applicable regulatory requirements;
- ensure that the service provider or other person has adequate and appropriate knowledge and experience to be able to perform the function;
- conduct a risk assessment of the person before entering into any service agreement and, where the person operates from outside the Cayman Islands, document and demonstrate the consideration of country risk;
- enter into a formal service agreement setting out the responsibilities of each party;
- review the policies and procedures of the service provider prior to entering into the service agreement, and test them on an ongoing basis, to ensure that they are adequate and will meet the Cayman Islands AML/CFT standards; and
- where the service provider operates from a jurisdiction with AML/CFT standards lower than those of the Cayman Islands, ensure that the service provider adopts and applies the Cayman Islands AML/CFT standards in the performance of the relevant function.

The Amendment has removed the requirement that a gap analysis be conducted in a reliance scenario, where a managed FSP (such as an investment fund) seeks to rely upon a service provider or other third party operating from outside the Cayman Islands⁴. Nevertheless, we understand that CIMA expects FSPs to

³ Available at <https://www.cima.ky/upimages/commonfiles/1499756196StatementofGuidanceOutsourcingRegulatedEntities.pdf>

⁴ This requirement was also applicable to a managed FSP seeking to rely on an eligible introducer operating from outside the Cayman Islands in accordance with Regulation 25 of the AMLRs.

consider the equivalence of the AML/CFT measures to be applied by a service provider in order to ensure that they are equivalent with the requirements of the Cayman Islands, even though the measures adopted may differ from the Cayman AML/CFT regime in certain regards. At a minimum, we would recommend that service providers be formed in and subject to the AML/CFT regime of either the Cayman Islands or an 'equivalent jurisdiction'⁵ in order for a Cayman Islands FSP to be able to rely on that service provider's policies and procedures.

Reporting officers – requirements

The Guidance Notes state that the person acting as MLRO/DMLRO must:

- be a natural person;
- be autonomous – meaning the MLRO/DMLRO is the final decision maker as to whether to file a SAR;
- be independent - meaning the MLRO/DMLRO has no vested interest in the underlying activity;
- have access to all relevant material in order to assess whether any given activity is suspicious; and
- be able to dedicate sufficient time to discharge the MLRO/DMLRO function efficiently.

Sector specific guidance – mutual funds and mutual fund administrators

The provisions of the Guidance Notes detailing how mutual funds and mutual fund administrators may meet their obligations in relation to the Procedures⁶ have been simplified, noting that the obligations in respect of the Procedures may be met in one of three ways, by:

- (a) implementing the Procedures directly;
- (b) delegating the performance of the Procedures to a person; or
- (c) relying on a person to perform the Procedures.

Any delegation or reliance should be effected in accordance with the principles detailed above, and a determination as to how a fund or fund administrator will meet its obligation to maintain and implement the Procedures should be recorded; whether by way of board resolution, amendment to existing policies and procedures, by supplement to an existing agreement, or otherwise.

Regulation 23 – payments delivered in person or electronically

Under Regulation 23 of the AMLRs, verification of the identity of a customer/investor may be deferred in certain, low risk scenarios where a payment is to be made electronically, in person or by post. The Amendment makes it clear that where this simplified due diligence (SDD) measure is being relied upon, the FSP must:

- have evidence (1) identifying the office or branch of the bank from which the electronic payment is made and (2) verifying that the account is in the name of the applicant/customer; and
- make a record of how the relevant transaction arose.

It is also clear that this SDD measure is not an exemption from conducting full customer due diligence; merely deferring the requirement to verify a customer/investor's identity from the point in time that the payment is received from a customer/investor, until the time that a further onward payment or payment of any proceeds is made, including any payment of redemption proceeds, or a distribution being made, back to the FSP's customer/investor.

⁵ See <https://www.cima.ky/list-of-equivalent-jurisdictions>

⁶ Regulated mutual funds and mutual fund administrators must have policies and procedures in place in accordance with the Anti-Money Laundering Regulations (2018 Revision). These procedures must 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**). In the absence of guidance relating specifically to unregulated investment funds, it is generally assumed that unregulated funds may meet their obligations in respect of the Procedures in the same way as regulated funds.

Deadline for appointment/notification of AML Officers

Our clients are reminded that regulated investment funds have until 31 December 2018 to notify CIMA of the appointment of their AMLCO, MLRO and DMLRO (collectively, the **AML Officers**), and unregulated funds have until 31 December 2018 to appoint AML Officers in accordance with the AMLRs.

Please see our previous update [here](#) for more detail.

Next steps

If you would like further information or advice regarding the above, please contact your usual Mourant contact or one of the persons listed below.

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[Document Reference]