

**APPENDIX 2**

**Cayman Islands Monetary Authority**

**SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT**



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

<b>Comments on the Proposed Guidance Notes Amendments</b>				
<b>Com ment #</b>	<b>Section</b>	<b>Industry Comment</b>	<b>Authority's Response</b>	<b>Consequent Amendments to the draft GN Amendments</b>
<b>General Observations</b>				
1.	Structure  CF	Amended Guidance Notes be issued in composite form, rather than have a separate amending document. This ought also be an opportunity to make the numbering convention throughout the Guidance Notes consistent.	CIMA endeavors to issue the consolidated version of the GNs at the end of 2018.	None
<b>Part II Section 2C</b>				
2.		The more natural and practical interpretation (which is	The Authority is of the view	Amended

	Section 2 Paragraph C8 CF	<p>supported by all the legal community) is that the requirement to designate in Reg 3(1) can be satisfied through delegation and/or reliance as noted in Reg 3(2). In other words, the designation does not need to occur first in time but can occur as part of the delegation/reliance process.</p> <p>This avoids a range of issues that would arise if there had to be two separate actions (i.e. designation, then delegation/reliance) and still aligns with the requirements of the FATF Recommendations (and past Cayman guidance/practice). In other words, a natural person would still be designated via the delegation/reliance process.</p> <p>The requirement to appoint an AMLCO at management level is already expressed at paragraph C2 and does not need to be repeated.</p>	<p>that paragraph C8 of section 2 of part II is in accordance with the AMLRs and is therefore legally sufficient. However, the Authority recognizes that there could be occasions in which it is commercially expedient for the designation of the AMLCO and reliance/delegation of the function to occur simultaneously. In that regard, the Authority proposes an amendment to the second sentence of the said paragraph as follows.</p> <p><i>However, "either subsequent to or at the time of" such designation the FSP may choose ...</i></p>	
3.	Appointing MLRO, DMLRO and AMLCO  CIIPA	In Section 2 draft paragraph C8 and in particular Section 9 draft paragraph B2 and Part VI Section 1 Paragraph G 8 and 9, requiring designation prior to delegation or reliance is impractical and particularly problematic where no staff member exists or board member qualifies for designation. If designation and delegation/reliance may occur simultaneously we suggest that this be acknowledged in the draft revised paragraphs.	<p>Agreed</p> <p>As mentioned above, an amendment will be made</p>	Amended
4.	Section 2 Paragraph C8 CIBA PSC; CNB	States "an FSP must designate a natural person at the managerial level as its AMLCO" however later in that paragraph it states " <b>irrespective of whether the AMLCO is an employee</b> 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	<p>The Authority is of the view that there is no inconsistency between the FAQs and the proposed amendments to the GNs.</p> <p>Irrespective of whether the</p>	None

		perform the compliance function". The second statement seems to suggest that there is a possibility that the AMLCO could still not be an employee. These statements seem to be inconsistent especially given the guidance given in the FAQs. Perhaps the Authority may consider removing the following if it is a requirement that the AMLCO be an employee – "the AMLCO is an employee and"?	function is carried on by an FSP itself or delegated the performance of the function to a person or relied on a person for the performance of the function, the ultimate responsibility to comply with the relevant obligations is of the FSP.	
5.	Section 2 Paragraph C 8A  CIBA PSC	Paragraph 8A would appear to be inconsistent with the Risk Based Approach in that an institution must define its own risk appetite and associated metrics upon Compliance, which will then determine the extent of procedures performed, rather than relying on those of a third party upon whom reliance is being placed.	Paragraph 8A merely explains what would constitute a reliance arrangement and what constitutes a delegation.  Paragraphs 8C and 8D speaks to the risk based approach that the FSPs should take when determining to place reliance on a person to perform any function. However, for clarity, the first sentence of 8A will be slightly amended as follows:  <i>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 ...</i>	Amended
6.	Section 2 Paragraph C 8B  CF	Given this paragraph is not in the mutual fund sector specific guidance, suggest that references are to an FSP, so there is no confusion that this relates only to mutual funds.	Paragraph 8B is an example. However, replacing MF with FSP would not negatively impact the explanation provided, therefore, references will be made to FSPs.	Amended to replace the term "Mutual Fund" with "FSP"

7.	Section 2 Paragraph C 8B CF	Suggested an express reference to the Procedures to reflect our understanding that this whole section is intended to cover reliance on another, not only to act as AMLCO, but also more generally any AML obligations, in particular, with respect to the obligations to have in place Procedures.	Agreed  Following paragraph 8, a new sub-heading "Reliance/Delegation - AML/CFT Functions" will be included for clarity.  Additionally, paragraph 9 will be included to briefly explain regulation 3(2) of the AMLRs. Paragraphs 8A to 8E will be re-numbered (10 - 14) and placed under the new sub-heading.	Amended  For better clarity, a new sub-heading is created for paragraphs 8A - 8E (renumbered 10-14)
8.	Section 2 Paragraph C 8B CIIPA	Suggest that if paragraph 8C5 is a harder or clearer expectation (using the term "shall") than 8B, then the second part of paragraph 8B (from "In a reliance scenario...") is unnecessary duplication and should be deleted.	Paragraph 8B is an example explaining reliance and delegation arrangements. Whereas, 8C5 stipulates principles which should be adopted by an FSP where it chooses to rely on a person for the performance of a function.	None
9.	Section 2 Paragraph C 8C CIBA PSC	How is an independent board going to perform and document all of this oversight? Subsection (4) would again appear to involve the engagement of another specialist party who, presumably themselves must then be subject to the same oversight process as well as the Outsourcing guidelines in Section 10 C of the Guidance Notes?	Outsourcing of functions is not new and is a longstanding practice in the industry.  Independent Boards should be capable of overseeing the reliance/delegation arrangements. A blanket reliance or delegation without any checks and controls by an independent board of an FSP is not a best practice and is unacceptable. For guidance (on	None

			the responsibilities of governing bodies), FSPs may refer to the SOG on Outsourcing.	
10.	Section 2 Paragraph C 8C CIIPA	In the reliance scenario we suggest that "client risk assessments or client risk assessment methodology" be added after "policies and procedures" as consistency in risk assessments or methodologies between the FSP and person on whom relying is key to whether reliance is appropriate.	The Authority considers that client risk assessment methodologies form part of "Policies and Procedures"	None
11.	Gap analysis of person relied upon CF	<p>Given CIMA's understanding of the distinction between "reliance" and "delegation" (where the latter is an outsourcing of the FSP's own policies and procedures), any gap analysis can logically only be applied to a person relied upon rather than "simply" delegated to.</p> <p>As a starting point, industry notes that there is no requirement in the AML Regulations for a gap analysis in respect of persons relied upon..</p> <p>Nevertheless, guidance is required for the purposes of interpreting Section 2 C, Paragraph 8C(4) and (5). For these purposes, the relevant notes of the Meeting (as follow) could be incorporated into guidance:</p> <p><i>"The AMLSG list of equivalent jurisdictions is for the purposes of assessing the possible applicability of simplified due diligence procedures. It does not represent a "blank check" certification as to the suitability of a delegate's jurisdiction's AML regime. It is required that at a minimum standards equivalent to the AML regime of the Cayman Islands are applied.</i></p> <p><i>However, the material point is that there is an equivalence of outcomes: e.g. that suspicious/illegal activity will be identified and reported (including to the Cayman Islands</i></p>	<p>The Authority is satisfied that the proposed guidance provided in paragraphs 8-8E is sufficient.</p> <p>Guidance in relation to simplified due diligence matters is already provided in the relevant sections (e.g. section 5) of the GNs.</p>	None

		<p><i>FRA) equally whether the delegate were applying the specifics of the Cayman Islands regime or that of the jurisdiction of an AML regulated delegate.</i></p> <p><i>There is no expectation that there will be a granular comparison of each stipulation of the Cayman Islands AML regime."</i></p> <p>Equally, if there are specific issue which CIMA have identified with respect to particular delegates or classes of delegate (whether due to their jurisdiction or otherwise), industry would be grateful if CIMA could set out such issues explicitly.</p>		
<b>Part II Section 4 B Paragraphs 65-67</b>				
12.	Section 4 paragraph B 64 to B 65  CF	The demarcation between the concepts of "reliance" and "delegation" must be carried through the Guidance Notes.	Noted  This matter will be addressed, where needed, when making the next round of amendments to the GNs.	None
13.	Section 4 paragraph B 66  CF	<p>As drafted this paragraph cross refers to Part II, Section 2. paragraph 8C. This will be extremely difficult to implement in practice and would render Eligible Introductions unworkable because:</p> <p>(a) An introducer is not going to agree to put in place a formalised agreement;</p> <p>(b) An introducer is not going to agree to the review of its policies and procedures and this ought to be unnecessary given an introducer has to fall into a category under Reg 22(d); and</p> <p>(c) Through the cross-reference in Reg 25(1) to Reg 22(d), it would not be possible for the introducer to be from a non-AMLSG approved jurisdiction.</p> <p>With respect to the latter requirement in particular, under Regulation 25 (and Paragraph 7 of Section 5 E. of the</p>	<p>Guidance on EI regime is provided in section 5 of the GNs. Therefore, paragraph 66 will be amended in lines similar to the following:</p> <p>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.</p>	Amended

		<p>Guidance Notes) an introducer person must fall within one of the categories set out in Regulation 22(d), which categories are listed in Section 5 C1 (4) of the Guidance Notes.</p> <p>The criteria include the following  "[a person] acting in the course of a business or is a majority-owned subsidiary of the business in relation to which an overseas regulatory authority exercises regulatory functions and is based or incorporated in, or formed under the law of, a country specified in the list published by the Anti-Money Laundering Steering Group"  As the law is drafted, only a person meeting the above criterion can be an eligible introducer.  Accordingly, the cross reference to Part II section 2, paragraph C ought to be deleted.  In addition, these additional requirements are not necessary since Regulation 25(1) is not ambiguous and therefore needs no additional guidance.</p>	<p>However, if a managed FSP is relying on an EI as allowed under regulation 25 of the AMLRs, the managed FSP should follow the procedures provided in section 5 E ("Procedure for Introduced Business") of the GNs.</p>	
14.	Introduced Business CIIPA	<p>The scenarios for reliance on introducers have been reduced and yet are addressed in three parts of the Guidance Notes (para 66, Part II Section 2 para 8C and Procedures for Introduced Business). Thus we suggest deleting para 66 to remove duplication since it is specific to managed services providers.</p>	<p>Noted</p> <p>Paragraph 66 will be amended to remove the existing language and to include references to the relevant paragraphs in the GNs, see above comment.</p>	Amended
<b>Part II Section 5 D</b>				
15.	Payments delivered in Person or Electronically  CIIPA	<p>In draft paragraph D1 in Section 5 for formatting suggest that current para (c) should not be numbered or else delete "...verification of the identity of a customer/applicant is not required at the time of receipt of payment, if..."</p> <p>In paragraph D2 since the dialogue with industry and the draft FAQs make clear that verification is only deferred (rather than not required) then we suggest this is clarified</p>	<p>Agreed and numbering will be removed for Section 5D.1(c).</p> <p>This provision is considered as a simplified due diligence measure by the AMLRs and the</p>	<p>Amended</p> <p>Changes to numbering is made</p>

		<p>i.e. that it is not a case of simplified measures but of deferred measures, with an explanation of if and how that differs from delayed verification as allowed generally under the Guidance Notes provided risk management procedure are in place. Also, we suggest moving the following words to D3 as a subsequent condition: "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."</p>	<p>language provided in the GNs is in line with the AMLRs.</p> <p>The Authority is satisfied that the second sentence of paragraph D2 is appropriately placed and moving this to paragraph D3 do not add any additional benefit.</p>	
16.	Regulation 23 – payments delivered electronically	<p>Although, CIMA's view of Regulation 23 is now understood, it was discussed at the Meeting that some funds/administrators that had previously relied on Regulation 8 as a simplified-due diligence measure were suspending redemption payments pending the carrying out of due-diligence in accordance with stipulations of the updated regime. CIMA explained that it was not the intention that the ordinary course of business be disrupted. Subject to funds/their administrators knowing the identity of the investors (as opposed to carrying out full verification) and such investors being assessed as low-risk, subject to the issuing of revised guidance it would continue to be possible to rely on the simplified verification afforded pursuant to Regulation 23 on the basis that a payment back to the same investor in the same bank account from which the investment was initially made would not be considered an "onward payment".</p> <p>However, industry will require a practicable transition period in order to remediate KYC which relied on old Regulation 8. Formal guidance is requested pursuant to which it is acknowledged that remediation on a "best efforts" and "risk based approach" will not incur penalties. Industry requests a period of a year from publication of the amended guidance for such transition, noting that the minimum practical period in respect of new redemption</p>	<p>During the meeting, the Authority has raised its concerns regarding FSPs' practices. The collection of CDD information or confirmation of holding the CDD is expected to have happened during the period of the relationship. However, the Authority has noticed that this is not in practice in all the occasions.</p> <p>For the purpose of existing arrangements, the Authority expects that all reasonable attempts should be made by the FSP to obtain CDD information, if this was never done, or to ascertain from the EI (if this was the arrangement) that all is in order prior to making the redemption payment.</p> <p>Of note, this concession would be only allowed in relation to</p>	None



		requests from an operations perspective is the end of this year (allowing for communication to investors and a typical 90 day redemption notice period).	payments that were imminent.  Since, the meeting was held on April 11th, 2018, the Authority expects an evidence of at least an attempt to obtain the necessary documents should be in place for all other redemption dates (which usually coincides with a month-end, and which for funds, is usually also a quarter end).	
17.	Regulation 23 of the AMLRs  CF	Additional clarity is requested in respect of Regulation 23. We understand from notes of CIMAs meeting with Cayman Finance that: "...it will be expected going forwards that Regulation 23 is used on an exceptions basis in low-risk scenarios where alternative verification measures have not been completed prior to on-boarding, for the purposes of not unnecessarily preventing subscriptions being completed." The above is very helpful and should be incorporated into the Guidance Notes.  However, note the practical necessity for transitional period from old regulation 8..	As outlined previously, during the discussions at the meeting the Authority made it clear that it expects that, while on boarding was allowed without all the CDD information in place, all reasonable attempts should have been made thereafter to obtain the information in advance of any payments being made.  As mentioned above, most FSP's failed to either obtain CDD information or to test their reliance on an EI having this information.  For a redemption request that is now pending, for a client that the FSP intends to continue providing services to, CDD as required under regulation 23 of the AMLRs	None

			<p>should be conducted within 60 days. Similarly, for a client that is redeeming completely and will also terminate its relationship as a client of the FSP, the same timeframe is also deemed reasonable to conduct the CDD as required under regulation 23 of the AMLRs.</p> <p>Notwithstanding the foregoing, FSPs should be able to demonstrate their compliance with the requirements under regulation 23 of the AMLRs before the end of the 2018.</p>	
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