

CAYMAN ISLANDS MONETARY AUTHORITY

PRIVATE SECTOR CONSULTATION



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

A. Introduction

1. Section 34(1)(c) of the Monetary Authority Law (2018 Revision) ("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. Subsection 34(4) states "[t]he guidance notes referred to as "The Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands" issued on the 26th April, 2001, shall be deemed to have been issued under subsection (1)".
3. 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.
4. The Cayman Islands Monetary Authority ("Authority" or "CIMA") seeks consultation and comment from the private sector associations concerning the following:
 - (a) *Proposed addition relating to Proliferation Financing to the Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands ("GNs")*
 5. The proposed addition to the GNs is attached as Appendix A.

B. Background

6. Proliferation is the manufacture, acquisition, possession, developing, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations. It includes technology, goods, software, services and expertise.
7. Proliferation financing is the act of providing funds or financial services which are used, in whole or in part, to make proliferation possible. In other words, it is the financing of the proliferation activities described above.
8. The Proliferation Financing Prohibition Law ("PFPL") criminalizes the financing of proliferation. The Authority has not published to date any requirements or guidance for financial services providers ("FSPs") relating to countering proliferation financing or applying the provisions of the PFPL.
9. In December 2017, the Caribbean Financial Action Task Force ("CFATF") assessed the framework for Anti-Money Laundering and Counter-Terrorism Financing in the Cayman Islands against the Financial Action Task Force 40 Recommendations and 11 Immediate Outcomes ("FATF Recommendations").
10. Recommendation 7 of the FATF Recommendations states: *Countries should implement targeted financial sanctions to comply with United Nations Security Council Resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.*
11. Immediate Outcome 11, relating to proliferation, 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. In addition, core issue 11.3 assesses: to what extent do financial institutions and designated non-financial businesses and professionals comply with, and understand their obligations regarding targeted financial sanctions relating to financing of proliferation?*

12. The CFATF's mutual evaluation report was published on March 18, 2019. The Cayman Islands received a rating of Moderate on Immediate Outcome 11.

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

13. The proposed addition to the GNs seeks to assist FSPs in understanding their obligations relating to the prevention of proliferation financing. The addition covers:

- (a) A definition and general discussion of the concepts of proliferation and proliferation financing;
- (b) International framework and domestic legislation relating to proliferation financing;
- (c) Differences between money laundering and proliferation;
- (d) Obligations of FSPs, including freezing and reporting;
- (e) Red flags

14. Section 6(1) of the MAL provides that the principal responsibilities of the Authority include 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;*

15. 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;*
- (...)*

16. The proposed addition to the GNs bolsters the Authority's effectiveness in the exercise of its regulatory functions. In addition, the new guidance will improve market confidence and the reputation of the Islands as a financial centre by reducing the possibility of financial services business being used for purposes of the financial crime of proliferation.

D. Implementation in Other Jurisdictions

17. Financial services regulators in comparable jurisdictions have issued guidance to regulated entities on countering the financing of proliferation. In drafting the proposed amendments to the GNs, the Authority considered guidance issued by the Jersey Financial Services Commission, regulators in the Bahamas (jointly by the Central Bank, Insurance Commission and Securities Commission) and the Monetary Authority of Singapore. The Authority also took into consideration the FATF Guidance on Counter Proliferation Financing and a Guidance Paper on Countering Proliferation Finance issued by the Royal United Services Institute for

Defence and Security Studies. Table 1 depicts the elements in place in each jurisdiction (as well as the proposed GN amendment).

Table 1 – Jurisdictional Comparison

	Bahamas	Jersey	Singapore	Cayman Islands (proposed)
Definition of Proliferation and Proliferation Financing	X	X	X	X
Main challenges of identifying proliferation financing		X		X
Description of international obligations	X	X	X	X
Description of local legislation	X	X	X	X
Explanation how proliferation operates	X			X
Reporting obligations		X		X
Description of export controls and dual purpose goods		X		X
How to conduct risk assessments	X	X	X	X
Governance process and escalation			X	X
Common Typologies and sound practices			X	
Case Studies			X	
Red Flags	X	X	X	X

E. Significant Costs and Benefits

18. Table 2 shows the estimated costs and benefits of the proposed addition to the GNs. The guidance on countering proliferation financing, while not imposing new obligations on FSPs, might lead FSPs to implement new systems, policies and procedures, given the previous dearth of guidance on this topic and the lack of specifics in the PFPL regarding how an FSP should comply with that law.

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>	None	<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 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 countering proliferation financing 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 proliferation elements 4. Amending risk based assessment to include 	<ol style="list-style-type: none"> 1. More clarity on obligations will reduce the time FSPs spend on deciding how to deal with potential cases of proliferation 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 it's ability to carry on business.

	Costs	Benefits
	<p>proliferation considerations</p> <p>5. Time and cost to build expertise on proliferation indicators, including dual use goods and proliferation patterns</p> <p>6. 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>	<p>4. Improved risk management and information on customers could prevent institution from being used to commit financial crime</p>

19. Given the hidden nature of financial crime, including proliferation financing, the task of estimating the benefits of the proposed guidance is challenging. The initial costs of implementing the guidance could be significant, particularly for small entities. However, most of the costs are onetime costs. 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.

F. Comments and Consultation

20. The Authority seeks consultation through written comments and representations from the private sector associations concerning the addition to the Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands. The Authority must receive representations by 1700hrs on Tuesday, July 2, 2019.

21. 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 j.plenkiewicz@cimoney.com.ky

22. 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.