



Bermuda Anti-Money Laundering / Anti-Terrorist Financing

Frequently Asked Questions (FAQs)

August 31, 2017

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Introduction

On May 2, 2017, KPMG hosted a Question & Answer Panel Session on Anti-Money Laundering ("AML") / Anti-Terrorist Financing ("ATF") with guest speakers from the Bermuda Monetary Authority ("BMA") AML Supervision team and the Office of the National Anti-Money Laundering Committee ("NAMLC").

This session was organised following a series of questions from regulated institutions in relation to the updates to Bermuda's AML / ATF Regulations; to the revised Guidance Notes; and in relation to Bermuda's preparation for the Mutual Evaluation ("ME") to be conducted by the Caribbean Financial Action Task Force ("CFATF") in 2018. The BMA / NAMLC acknowledged industry's request for additional support and participated in an informal Q&A session to respond to the questions and challenges regulated institutions are facing. This FAQ document has been prepared in response to the questions received during and after the event and represents the views solely of the BMA.

This FAQ document has been prepared from the BMA and NAMLC's responses to the questions received during and after the event and represents their views, not those of KPMG.

Event details were as follows:



Date: **Tuesday, May 2, 2017**

Time: **3:00pm – 5:00pm**

Location: **Bermuda Underwater Exploration Institute (BUEI)**

Panel: **Shauna MacKenzie (BMA), George Pickering (BMA), Katie Duguay (BMA) and Paula Tyndale (NAMLC), facilitated by Charles Thresh (KPMG)**

We would be happy to help with any additional questions you may have.

Regards,

Charles Thresh

Managing Director,
KPMG in Bermuda

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1. 2018 CFATF Mutual Evaluation

1.1 What can regulated financial institutions (RFIs) do to prepare for and what is the role of the industry during the CFATF Mutual Evaluation?

The Mutual Evaluation (ME) process starts with Bermuda making a written submission to the assessment team about its technical compliance with the FATF's standards. The process concludes after the Plenary of the CFATF discusses and approves the report and a final report is approved for publication by the FATF, after it has been thoroughly vetted through a quality and consistency process. The entire mutual evaluation process will last between 15 to 18 months. The following outlines the stages of industry's involvement in the process.

i. The Industry's role in the process begins from the time they implement the requirements of Bermuda's AML / ATF laws. Industry should therefore prepare for the Mutual Evaluation by being diligent about their compliance with the Proceeds of Crime Anti-money Laundering and Anti-Terrorist Financing Regulations 2018 and maintaining good records to evidence their AML / ATF policies, procedures and controls, CDD and other critical preventive measures; A critical component of a well-executed compliance programme is suspicious activity reporting industry should therefore be prudent about having effective systems in place to allow them to identify, flag and report suspicious activities to the FIA. Additionally, active participation in training and outreach sessions organised by the BMA, NAMLC or other industry partners is strongly recommended.

ii. Industry will also be requested to participate in the mutual evaluation itself, starting at the stage when written submissions are being prepared. Industry's input in the preparation of the submissions on effectiveness in relation to Immediate Outcome 4, will therefore be required. The submissions on effectiveness must be provided to the assessment team 4 months prior to their on-site visit.

iii. During the on-site visit, industry will also be requested to participate in interviews conducted by the assessment team and will be expected to provide any required evidence to confirm or clarify the previous written submissions on effectiveness.

In order to support preparations for the ME, NAMLC will be raising the level of outreach to industry and other stakeholders, including facilitating country training in early 2018, to inform and prepare all stakeholders, spanning competent authorities and industry. Where appropriate, town-hall style meetings will be held to update and inform industry about the ME. In addition, a public relations campaign providing targeted information to the public, is intended to enhance public awareness of and tolerance for the compliance efforts of industry, as well as inform the public of the ways they can help to sustain Bermuda's reputation as a quality jurisdiction.

1.2 How will the RFIs be chosen by the CFATF Mutual Evaluation team?

After having reviewed Bermuda's technical compliance and effectiveness submissions, the ME assessment team will prepare a scoping paper about the areas to be focused on during the onsite visit. This scoping paper is usually provided to the country 2 – 3 weeks ahead of the visit; and will include an indication of the specific sectors to be examined during the visit. The assessment team may or may not specify individual institutions they wish to meet with, based on their research of the jurisdiction, in which , Bermudian authorities will be obliged to arrange for the team to meet those specified institutions. Otherwise, once the scoping paper is received, Bermudian authorities, in consultation with industry will select representative institutions from the specified sectors and make arrangements for them to meet with the assessment team during the onsite visit.

1.3 Will RFIs be assessed on their group AML / ATF compliance where they have international subsidiaries?

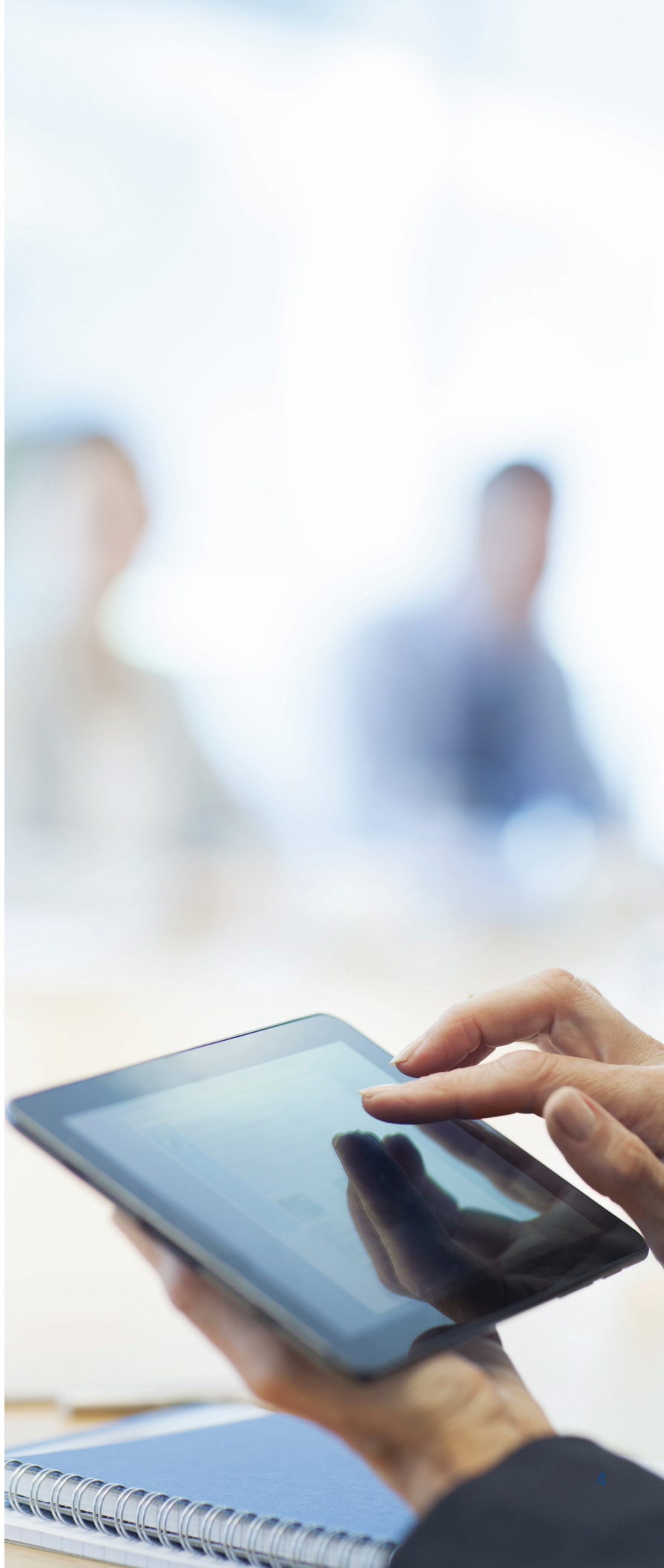
The Board of a holding company must be satisfied that all branches and subsidiaries are effectively addressing their AML / ATF compliance and effectiveness. Regulated financial institutions will be assessed on Regulation 12: Branches and Subsidiaries which requires RFIs to adopt group-wide policies and procedures that facilitate the sharing of customer due diligence and transaction information and ensure adequate safeguards on the confidentiality and use of information exchanged. The RFI must apply measures in their branches and subsidiaries which are at least equivalent to those set out in the Regulations with regard to customer due diligence measures, ongoing monitoring and record-keeping.

1.4 We often hear the remark that Bermuda may be over-regulating, to its disadvantage. Are we aiming too high?

Bermuda's economic engine is powered largely by international business, especially international financial services. Bermuda's international business sector has to be well-regulated according to the various applicable international standards, in order to maintain its standing as a well-respected and reputable international financial center. In part, that means having a robust and effective AML / ATF framework that protects Bermuda's financial system from being targeted and abused by criminals.

This requires adherence to the international standards prescribed by the FATF in the 40 Recommendations and 11 Immediate

Outcomes on Effectiveness. Unlike larger jurisdictions whose economies are much more diverse, Bermuda will not have significant cushioning against the negative consequences that may affect the international business sector in the event there are adverse findings in critical areas of the mutual evaluation. Additionally, the FATF stipulates minimum standards but also mandates countries to assess and understand ML / TF risk and put in place measures commensurate with their risk. No two countries will have the same risk profile and thus it is both difficult to compare jurisdictions and to justify adhering to just minimum standards where a country's risk profile might require more effort to mitigate higher risk. Bermuda is an appealing jurisdiction for international business because it is compliant with the global standards and must do everything to maintain this status. Lowering standards would put Bermuda at risk.



2. Anti-Terrorist Financing

2.1 Are typical measures taken to address risk from an AML perspective enough to address ATF risk as well?

Measures which financial institutions should take to ensure they are compliant with ATF regulations:

- Identify high risk and non-cooperative jurisdictions for terrorism and terrorist financing;
- Understand the red flags of terrorist financing (see FATF publications) and ensure that your Company has the relevant systems and controls to detect and respond to alerts and red flags; and
- Improve and update your understanding of TF risks and educate your employees accordingly.

2.2 What information is available on Bermuda specific ATF considerations?

NAMLC in cooperation with the BMA and other competent authorities conducted a national risk assessment on terrorist

financing for Bermuda, which also included industry participation during the second half of 2016. A report has been produced and presented to cabinet; a public document is currently being written and should be released in the near future.

While there have been international alerts and intelligence reports, and Bermuda has participated in providing international assistance on TF related cases, there have been very few intelligence reports and requests related to TF in Bermuda. Nevertheless, NAMLC and competent authorities are mindful of Bermuda's status as an international financial centre and the potential TF risk on such a sector.

Based on the lack of actual terrorist financing cases, and in order to assess the potential for terrorist financing occurring in Bermuda, relevant international TF trends and typologies were analysed in the unique Bermudian context, and conclusions were drawn about the likelihood of occurrence of those scenarios. This is an area which has been monitored by the police and the FIA; and the BMA and NAMLC intend to continuously focus on this in the future.

3. Customer Due Diligence

3.1 What should I do if my customer is a subsidiary company which doesn't have access to information on the shareholders of its parent company?

Lack of access to information is not a sufficient reason for customers not to provide that information to RFI in Bermuda. Where a Bermuda registered company is fully owned by another privately owned company, it is important for the RFI to know who the beneficial owners and controllers of that private company are.

Where the beneficial owner cannot be identified due to the inability to obtain customer due diligence information, the RFI must consider filing a suspicious activity report ("SAR") document the incident and terminate the customer relationship (see Regulation 9).

Note: For RFIs that are not CSPs, beneficial owners include those who ultimately own or control more than 25% of the shares or voting rights in the body; or as respects any body corporate, otherwise exercises control over the management of the body (whether through direct or indirect ownership or control, including through bearer share holdings).

For CSPs, that threshold falls to 10% for CDD beneficial ownership and control. Refer to Regulations 3(1) (a-b) and 5(1).

It is noted that the 10% and 25% thresholds are intended to be used only as a guide. When vetting a customer, it is important to understand the risk of the account, understand the customer or entity, what it does, and who all the owners are regardless of the percentage. Of course, due diligence will apply to the major shareholders, but do not forget that the minor ones are also important.

4. Enhanced Due Diligence

4.1 Is verification of source of funds (SoF) and source of wealth (SoW) required for customers who are not PEPs but assessed as high risk?

For customers rated high risk, verification of both SoF and SoW are required in line with the General Guidance Notes (5.110 to 5.113).

It is important to note the difference between SoF and SoW. SoF means the origin of the particular funds or other assets that are involved in the business relationship or occasional transaction. The information concerning the SoF should be substantive and go beyond the financial institution and account from which the funds were transferred to include details such as the identity of the sender (or recipient) and the reason for receiving (or sending) the funds. SoW should provide an indication of the person's volume of wealth and a general understanding of how the person acquired that wealth.

4.2 Where SoW was not obtained originally e.g. for the purchase of a policy or the establishment of a trust pre-2009, are RFIs expected to request this information now?

The following steps should be taken to obtain adequate evidence for SoW for old customers:

- i. Perform public research. In particular, SoW verification for public persons can often be obtained from various providers such as Thompson Reuters. A wide range of possible sources can be used to research and verify a person's wealth, income, specific assets and lifestyle including: databases concerning legal and beneficial ownership such as publicly available property registers, land registers, asset and income disclosure registers, and company registers, as well as past transactions (for existing customers), internet and media searches (for high profile persons) and social media. (GN 5.113)
- ii. If you cannot obtain anything publicly available, reach out to customers to provide any available SoW verification from their banks, investment firms, lawyers and business partners.
- iii. If this information is not available, ask the customer to fill out an account profile form or self-declaration of SoW and its source and make any necessary comparisons, e.g. compare the stated average salary of the customer and determine whether it matches the initial and subsequent investments on the account. Independent searches should be performed on the customer using reliable sources and compare it with the information supplied.

Once these steps have been completed, the file can be considered to be remediated in respect of the SoW requirement.

4.3 For corporate entities, if the client is high risk, do we need to obtain SoW verification for controllers of the entity also?

Yes, if the entity is assessed to be high risk, the controller of that entity should be assessed as high risk. Where the money laundering or terrorist financing risks are high, or where a corporate may be seeking to avoid the application of certain CDD measures, the RFI may find it necessary to verify all directors and other individuals exercising significant control over the management of the corporate. Part of that full EDD would be obtaining the SoW from the controllers of the corporate entity. See General GN 4.88 and 4.89.

5. Reliance on other financial institutions

5.1 Is a comfort letter from another regulated entity sufficient to apply reliance for CDD purposes?

A simple comfort letter is considered insufficient to establish reliance. The requirements for reliance are described in detail in the General Guidance Notes (GN 5.118-5.174). The historic context around comfort letters doesn't exist anymore.

- It is fine for RFI's to use letters with other entities; what is important is that the requirements of the legislation and guidance notes are dealt with in the letters; and
- Note that the amendments to the Regulations have enhanced the requirements where Reliance is used.

5.2 What about if our Company has relied on another company to fulfill CDD or has outsourced other AML requirements to a third party, does our responsibility end there?

No, prior to entering into any outsourcing or reliance relationship, a regulated entity should assess the risks of involving such a third party service provider in AML / ATF compliance matters for which the RFI is ultimately responsible. The risks identified should be factored into the decision whether or not to enter into the relationship, and into the risk ratings for any customers, products, services and transactions affected by the relationship. If something goes wrong and AML / ATF responsibilities are not fulfilled, the relying RFI will be held liable.

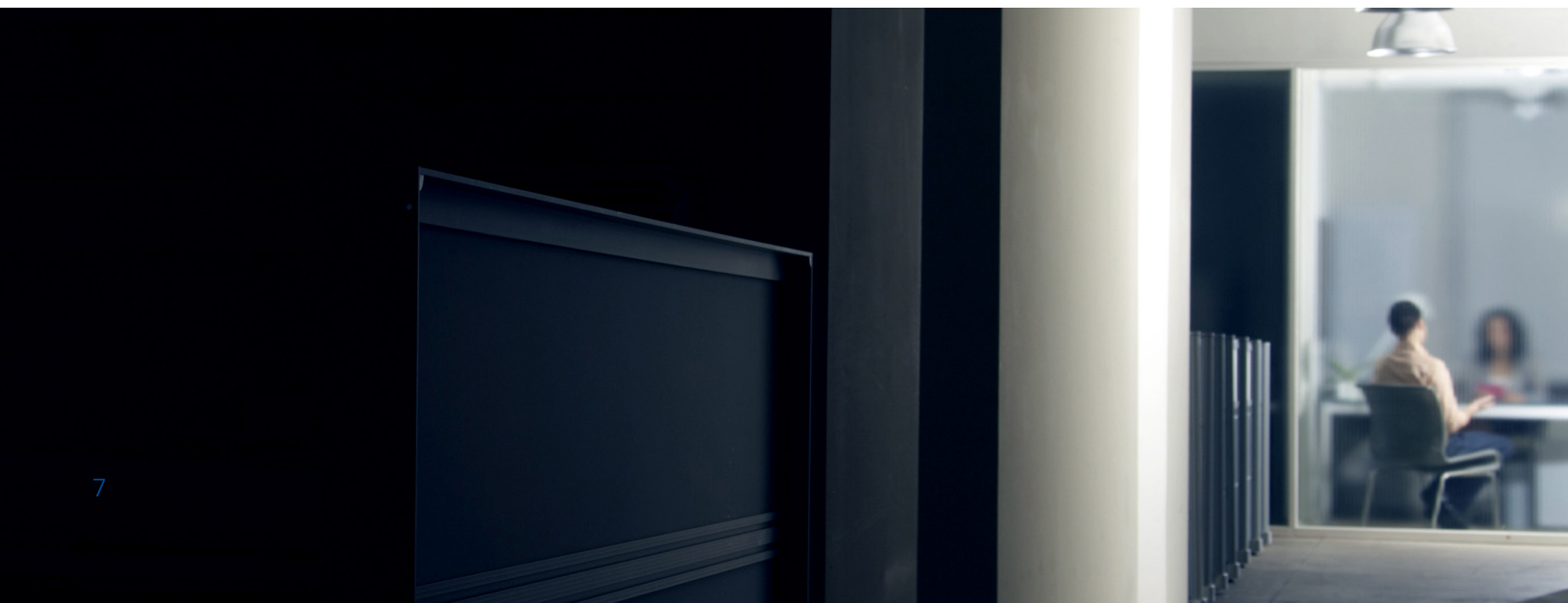
5.3 How should RFI's treat nominee accounts?

Institutional nominee accounts have been legitimately used for business purposes by the banking and investments sector for investment holdings and to facilitate trading. Even if an RFI uses a nominee account to facilitate a trade it is important that the RFI knows who the individuals are behind that trade. Likewise, if a Corporate Service Provider provides nominee services it is important to know the identity of the beneficial owner(s) and controllers of the account.

There is now a strong consensus for greater transparency over beneficial ownership, given the widespread abuse of shell companies, nominee directors and shareholder services and offshore structures in facilitating various types of criminal activities. One red flag indicator noted by the FATF for Trust and Corporate Service Providers is the use by prospective clients of nominee agreements to hide the beneficial ownership of client companies.¹

When dealing with nominees, RFI's must apply a risk-based approach to applying CDD on their customers. RFI's cannot rely on another financial institution which is reluctant to provide certain CDD information. If the nominee will not give the RFI the underlying ownership information, consider filing a SAR and terminating the business relationship. Ultimately, if something goes wrong and AML responsibilities are not fulfilled, your company can be held liable.

¹FATF: "Money Laundering Using Trust and Corporate Service Providers, October 2010.



6. Equivalent jurisdictions

6.1 What is an RFI expected to do to establish that another jurisdiction has equivalent AML / ATF regulation?

The regulations around reliance and outsourcing place a lot of emphasis on whether the entity on which you are placing reliance is located in a jurisdiction which has equivalent regulations to Bermuda.

There is no list of equivalent jurisdictions. The onus is on the RFI to determine whether a company is in a jurisdiction with equivalent legislation. Each jurisdiction is required to comply with the FATF 40 Recommendations and related guidance. It is, therefore, up to the RFI to ensure that its local and foreign operations apply the requirements, policies and procedures equivalent to that in Bermuda, unless the foreign jurisdiction's requirements are higher.

6.2 What sources can I use to establish if countries have equivalent AML / ATF regulation?

Think of this in terms of taking the list of EU/FATF countries and take into account high risk jurisdictions. Most, but not all, FATF member countries may be deemed equivalent for Bermuda's purposes.

However, countries like Mexico are exceptions in that they factor high on Transparency International's CPI list for corrupt jurisdictions and may be listed as a jurisdiction of "Primary Concern for Money Laundering" on the US Department of States INCSR list.

For references see: high risk jurisdiction list (FATF), Transparency International's CPI index and the country ratings in the US Department of State's INCSR report (Volume II).

7. Ongoing monitoring

7.1 What should a customer review look like?

The Ongoing Monitoring review should include:

- A sanctions screening and internet search on the customer and other relevant parties, beneficiaries and controllers on the account;
- A reassessment of the customer's risk rating;
- Evidence of transaction monitoring over a period of time since the last review; and
- Updating CDD information including expired passports and (on a risk-sensitive basis old utility bills).

REF: General GN Ch. 7; Sections 7.6:

If the customer has been subject to non-compliance issues, the risks identified should be factored into the decision whether or not to enter into, or terminate an existing relationship, and into the risk ratings for any customers, products, services and transactions affected by the relationship.

Where the customer is the subject of serious non-compliance issues the RFI should consider the ML/TF risk and reputational risks and its own risk appetite and consider filing a SAR and terminating the relationship immediately.

If an RFI facilitates a client's fraudulent or ML /TF activity, internationally or otherwise, they face potentially severe legal and regulatory repercussions and it may impact Bermuda's reputation as a reputable international financial center.

7.2 What should I do if a counterparty has been subject to regulatory action such as fines for inadequate controls?

Negative information, such as lists of individuals who are deceased, subject to sanctions or known to have committed fraud, should force Compliance to do Enhanced Due Diligence on a subject and cause a re-evaluation of the ML /TF risk of that client.

8. AML independent audit

8.1 Does the independent audit need to include all aspects of the AML / ATF compliance programme?

The audit must focus on the entire AML / ATF programme of the company and be separate and distinct from any general audit. The results of the audit should be documented, recorded electronically and reported to senior management and the Board for timely action. All aspects of the AML / ATF programme should be tested each year but can be completed on a rolling basis throughout the year. More information on the scope of the independent audit can be found in sections 1.77 and 2.83 of the General Guidance Notes.

8.2 Who can conduct the AML independent audit?

The independent audit does not have to be performed by an external service provider, but can be performed by an internal, appropriately qualified member of management as long as they are not part of the daily compliance functions or the day to day operations of the company and they have adequate knowledge of the Bermuda AML / ATF regulations and guidance notes.

Technically, a non-executive director (“NED”) could perform an AML independent audit. In such cases, prudence requires that the Board composition be sufficient such that if a NED conducts the AML audit, there would be other NEDs on the Board to provide independence, constructive challenge and actively participate in the decision-making process of a Board. Additionally, the NED would have to recuse themselves from the related AML compliance and audit discussions. Any such arrangements as described above would be reviewed closely by the Authority.

8.3 When should it be completed?

The Authority expects that companies will have developed a plan for dealing with the independent audit requirement in 2016 and the RFI should have already conducted the independent audit – or be finalising the report no later than June of this year.

A company’s AML / ATF programme should be assessed by the Chief Compliance Officer at least annually (and more frequently when senior management becomes aware of any gap or weakness in the AML / ATF policies, procedures or controls, or when senior management deems it necessary due to the RFI’s assessment of the risks it faces).

8.4 What does the regulator expect from the AML audit?

In terms of what is expected during an independent audit, it has a broad scope and must test whether the AML / ATF programme is implemented and working effectively. More can be found in sections 1.77 and 2.83 of the General Guidance Notes, including:

- The RFI should test the effectiveness of its AML / ATF policies, procedures and controls. AML / ATF Policies and Procedures should be reviewed every year, not only vis-à-vis compliance with the Bermuda Regulations but also revised in keeping with the Company’s business plan, changes to markets and product and service offerings.
- Evaluate the risk ratings the RFI has assigned with respect to its size, customers, products, services, transactions, delivery channels, outsourcing arrangements and geographic connections;
- Assess the adequacy of the RFI’s AML / ATF policies, procedures and controls including:
 - Risk assessment;
 - Customer due diligence;
 - Risk mitigation and other measures to manage higher risks;
 - On-going monitoring;
 - Detecting and reporting suspicious activity;
 - Record-keeping and retention; and
 - Reliance and outsourcing relationships;
- Test compliance with the relevant laws and regulations;
- Test the AML / ATF controls for the RFI’s transactions and activities, with an emphasis on higher-risk areas;
- Assess employees’ knowledge of the relevant Bermuda Acts, Regulations and guidance, the RFI’s policies and procedures and the role of each employee within the RFI; and
- Assess the adequacy, accuracy and completeness of employee training and awareness programmes.

9. Suspicious Activity Reporting

9.1 Do I have to be registered with GoAML even if I have never filed a SAR?

Yes. It is important for an RFI be registered with the FIA with GoAML, so that there is an avenue to report SARs in the instance that you do need to as the FIA no longer accepts paper copies.

For help with registration, contact the FIA at email: analyst@fia.bm or chollis@fia.bm.

9.2 What should staff be aware of?

Red flag awareness: It is important that you raise awareness with your company and its employees on the red flags for suspicious activity within your business and industry. These red flags can be found in our Guidance Notes and on the FATF website.

Don't tip off the client: If a SAR is going to be filed or is already filed, do not probe around on the CDD too much as it may result in tipping the client off and prejudicing the investigation (see Reg. 6(5)).

9.3 What should I expect to happen once I file a SAR?

Don't count on an update from the FIA; once you file a SAR, you should expect the FIA to confirm they have received the report and nothing else unless the information you provided was insufficient. The FIA will not tell you what happened to the case.

If you are filing a SAR, you must wait for consent from the FIA to proceed with the transaction. Under the provisions of Sections 43, 44 or 45 of the Proceeds of Crime Act, consent can be obtained in the following circumstances:

I) If the FIA does not respond within 7 working days, implied consent is given and you can proceed with the transaction.

II) Consent is refused within the 7 working days and after 45 calendar days (moratorium period) nothing more is heard, implied consent is given and the transaction can be conducted.

9.4 What does the BMA expect to see in respect of SARs during an onsite inspection?

Appropriate ongoing monitoring; we must underscore the need for appropriate ongoing monitoring and properly documenting when you detect something unusual including unusual patterns, unusually large or suspicious activities. If the MLRO decides not to report the matter to the FIA, it should still be logged and documented in the internal SAR log.

The Supervisor's expectations during on-site visit: During an on-site, what the Authority expects to see is the date the transaction/report was made to the MLRO, the name of the account, a description of the activity and whether it was sent to the FIA and the date sent or closed. If an internal SAR was not disclosed to the FIA, there should be a reasonable explanation as to why it was not filed along with supporting documentation. Please see Chapter 9 of the General Guidance Notes for more details.

10. Insurance managers

11.1 Does the definition of “regulated financial institutions” capture insurance managers who manage non-life business?

Yes. The legislation to extend the scope of the definition was passed and signed into effect the last week of March. It is the intention of the Authority to issue Guidance Notes for Insurance Managers, followed by an outreach (with that date to be determined) to provide further guidance on the extent of CDD to be applied.

11.2 What is an insurance manager expected to do differently in relation to its direct life insurance clients (AML regulated entities), that is different to its P&C/Reinsurance clients (non-regulated entities)?

The same Regulations apply in both situations. In the implementation of these, however, certain products and services of Insurers carry a higher risk. For example, there is a higher risk with the direct life insurance business, particularly where the product allows early redemption or redemption to third parties etc. With those products, enhanced CDD and ongoing monitoring should apply.

11.3 Are two separate AML independent audits required for e.g. an insurance manager and a long-term insurer?

Depending on the relationship between the two entities, the AML independent audit can be done collectively and does not require two separate independent audits.

11. Corporate Service Providers (“CSPs”)

12.1 When will the CSP Regime be fully launched and how will we know?

There have been changes to the international regulatory landscape and the legislation since the launch of the CSP licensing process. An industry outreach session was held on 8th June 2017 consisting of teams from the AML / ATF, prudential and licensing areas. The Authority aims to remedy the situation shortly and hopes to complete the licensing procedure for all CSPs soon in order to be compliant with international AML / ATF standards.

12.2 What are the Authority’s expectations for independent audits for CSPs that are not licensed yet?

CSPs have been subject to the AML / ATF Regulations since 2014. The requirement to conduct an AML independent audit took effect

on 1st January 2016. Therefore, if the Authority commences an on-site supervision at a CSP this year, the Authority would expect that the CSP has a detailed plan in place for conducting an independent AML audit and see the results of the first independent audit. Alternatively, an independent audit should be occurring in the near future and no later than the end of year.

12.3 What should CSPs expect in terms of on-site and off-site supervision?

As soon as the CSPs are licensed, they will be subject to the same supervisory regime as other licensed entities. More information on the Regulator’s expectations can be found in the CSP Guidance Notes located in the CSP menu of the BMA website under “Policy and Guidance”.

Glossary

AML: Anti-Money Laundering

ATF: Anti-Terrorist Financing

BMA: Bermuda Monetary Authority

CDD: Customer Due Diligence

CFATF: Caribbean Financial Action Task Force

CPI: Corruption Perceptions Index

CSP(s): Corporate Service Provider(s)

EDD: Enhanced Due Diligence

EU: European Union

FATF: Financial Action Task Force

FIA: Financial Intelligence Agency

INCSR: International Narcotics Control Strategy Report

ME: Mutual Evaluation

ML: Money Laundering

MLRO: Money Laundering Reporting Officer

NAMLC: National Anti-Money Laundering Committee

NED: Non-executive Director

PEP: Politically Exposed Persons

RFI: Regulated Financial Institutions

SAR: Suspicious Activity Report

SoF: Source of Fund

SoW: Source of Wealth

TF: Terrorism financing

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