



NOTICE

6 April 2018

Designation/Appointment of MLRO, DMLRO and AMLCO for Funds

Pursuant to regulations 3(1) and 33 of the ALMRs, a fund doing business in or from the Cayman Islands must designate a natural person, at managerial level, to act as its Anti-Money Laundering Compliance Officer ("AMLCO"), Money Laundering Reporting Officer ("MLRO") and Deputy Money Laundering Reporting Officer ("DMLRO").

As outlined in Part II, Section 2.C.7 of the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorists Financing in the Cayman Islands issued on December 13, 2017 (the "GNs of December 13, 2017")-

"[an] FSP may designate its AMLCO to act as its [MLRO] or vice versa as far as the person is competent and has sufficient time to perform both roles efficiently. Where an individual is both an MLRO and AMLCO, that person should understand the roles and responsibilities of each function."

Delegation/Reliance and MLRO/AMLCO Functions

Regulation 3(2) of the AMLRs permits a person carrying out relevant financial business ("RFBs") to delegate the performance of any function, outlined in the AMLRs, to a person; or to rely on a person to perform any function required to be performed under the AMLRs. However, such delegation or reliance presupposes that the designation of a natural person for the role of AMLCO/MLRO/DMLRO has first taken place in accordance with regulations 3(1) (AMLCO) and 33 (MLRO/DMLRO) respectively, of the AMLRs.

RFBs must adopt and apply the principles set out under Part II, Section 10. C, "Outsourcing", of the GNs of December 13, 2017 when delegating the performance of any function to a person.

Further, when RFBs are relying on a person to perform any function, the Authority expects that such arrangements would include provisions to:

- (1) ensure that the person on whom reliance is being placed has adequate and appropriate knowledge and expertise to perform the function;
- (2) conduct a risk assessment of the person before entering into an agreement with the person and placing reliance;
- (3) have a formalised agreement with the person on whom reliance is being placed, setting out the responsibilities of each party;
- (4) review policies and procedures of the person prior to entering into the reliance agreement and test them, from time to time; and

- (5) ensure that the person adopts the Cayman Islands standards in relation to the performance of the function (for which reliance is being placed), where the person operates from a country outside the Cayman Islands in which the relevant standards are lower when compared to the Cayman Islands.

Gap Analysis for Delegation to, and Eligible Introductions from, AMLSG Jurisdictions

Regulation 25 of the AMLRs allows RFBs to rely on EIs from AMLSG list countries for collecting identification information and verifying the identity of customers in low risk scenarios. The requirement for a gap analysis was included in the GNs of December 13, 2017 to ensure that RFBs duly consider country risk as a part of their risk based approach as outlined in the AMLRs.

While there is no specific requirement under the AMLRs to conduct a gap analysis when relying on EIs that are from AMLSG list countries in low risk scenarios, to prevent RFBs from directly relying on the AMLSG List solely for business efficiency, without also taking into consideration the requirements for a “risk based approach” and the need to demonstrate their own considerations for reliance, RFBs are required to document and demonstrate their consideration of country risk.

Guidance on Regulation 23

Regulation 23 of the AMLRs does not completely exempt RFBs from conducting verification of identification, for example, in relation to onward payments. It only allows conducting verification at a later stage in low risk scenarios. Where a transaction meets any of the criteria set out in regulation 23 (2), RFBs shall conduct full CDD. Further, it should be noted that regulation 23 (2)(c) captures all onward payments, including a payment back to the same bank account of the applicant/customer (from which the original payment is received) and therefore requires verification of the identity of the applicant/customer or any other person.

To ensure greater clarity on the matters set out above, the Authority, subject to its Board of Directors’ approval, will amend the language of relevant paragraphs in the Guidance Notes of December 13, 2017 to better align with the AMLRs.

Practical Considerations

All funds must designate an MLRO, DMLRO and AMLCO and be able to demonstrate to the Authority their compliance with such requirement, by the submission of the requisite information via the Authority’s REEFS portal, on or before September 30, 2018. For funds registering as at June 1, 2018, such compliance must be demonstrated by the provision of the requisite information at the time of the submission of the registration application via the Authority’s REEFS portal.

For further information please contact the Investments Supervision Division by email at contactinvestments@cimoney.com.ky.