



BERMUDA

SECTOR-SPECIFIC GUIDANCE NOTES FOR TRUST BUSINESS

Take notice that pursuant to section 49M of the Proceeds of Crime Act 1997, the Minister of Legal Affairs has approved the Sector-Specific Guidance Notes for Trust Business. The Bermuda Monetary Authority has issued these Guidance Notes in accordance with its responsibilities under section 5(2) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008. The full text of the Guidance Notes is available for download on the website of the Bermuda Monetary Authority at www.bma.bm

Made this 20th day of October 2016.

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Chief Executive Officer



ANNEX I

Sector-Specific Guidance Notes for Trust Business

These sector-specific guidance notes should be read in conjunction with the main guidance notes for AML/ATF regulated financial institutions on anti-money laundering and anti-terrorism financing.

ANNEX I - SECTOR-SPECIFIC GUIDANCE NOTES FOR TRUST BUSINESS

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ANNEX I - SECTOR-SPECIFIC GUIDANCE NOTES FOR TRUST BUSINESS

Introduction

- I.1 This annex sets forth guidance on AML/ATF obligations under the Acts and Regulations of Bermuda that are specific to trust business.
- I.2 Under Regulation 2(2)(g) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the Regulations), persons carrying on trust business within the meaning of section 9(3) of the Trusts (Regulation of Trust Business) Act 2001 are designated as anti-money laundering and anti-terrorist financing (AML/ATF) regulated financial institutions (RFIs).
- I.3 The Regulations apply to all RFIs, a term which, by Act and Regulation, includes nearly all persons providing the services of a trustee as a business, trade, profession, or vocation. Under Regulation 2(2)(g), the sole persons providing trustee services who are not RFIs are those persons conducting only private trust business as defined in Section 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002.
- I.4 All RFIs must comply with the Acts and Regulations, and with the AML/ATF guidance notes (the main guidance notes) issued by the Bermuda Monetary Authority (BMA).
- I.5 RFIs conducting trust business should read these sector specific guidance notes in conjunction with the main guidance notes for RFIs on AML/ATF. This annex supplements, but does not replace the main guidance notes.
- I.6 Portions of this annex summarize or cross-reference relevant information that is contained in detail in the main guidance notes. The detailed information in the main guidance notes remains the authoritative guidance.
- I.7 Portions of this annex include sector-specific information, such as risk indicators that are particular to trust business. This sector-specific information should be considered as supplementary to the main guidance notes.
- I.8 Where a customer is a legal arrangement that differs in control or ownership structure from that of a Bermuda trust, for example an anstalt, stiftung, fiducie, treuhand, fideicomiso or foundation, an RFI should establish an understanding of the legal requirements within the legal arrangement's home jurisdiction, and the

RFI should obtain and verify information equivalent to that required by this guidance.

Status of the guidance

- I.9 Approved by the Minister responsible for Justice, these guidance notes are issued by the BMA under Section 5(2) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA Act 2008).
- I.10 These guidance notes are of direct relevance to all senior management, inclusive of the Compliance Officer, and the Reporting Officer. The primary purpose of the notes is to provide guidance to those who set the RFI's risk management policies, procedures and controls for the prevention and detection of money laundering and terrorist financing (ML/TF).
- I.11 The Court, or the Authority, as the case may be, in determining whether a person is in breach of a relevant provision of the Acts or Regulations, is required to consider whether a person has followed any relevant guidance approved by the Minister of Justice and issued by the Authority. These requirements upon the Court are detailed in the provisions of Section 49M of POCA 1997, Regulation 19(2), Section 12(O) of, and paragraph 1(6) of Part I, Schedule I to, ATFA 2004 and the requirements in relation to the Authority are detailed in Section 20(6) of the SEA Act 2008.
- I.12 When a provision of the Acts or Regulations is directly described in the text of the guidance, the guidance notes use the term “**must**” to indicate that the provision is mandatory.
- I.13 In other cases, the guidance uses the term “**should**” to indicate ways in which the requirements of the Acts or Regulations may be satisfied, while allowing for alternative means, provided that those alternatives effectively accomplish the same objectives.
- I.14 Departures from this guidance, and the rationale for so doing, should be documented, and RFIs should stand prepared to justify departures to authorities such as the BMA.
- I.15 RFIs should be aware that under Section 16 of the Financial Intelligence Agency Act 2007, the Financial Intelligence Agency (FIA) may, in the course of enquiring

into a suspicious transaction or activity relating to money laundering or terrorist financing, serve a notice in writing on any person requiring the person to provide the FIA with such information as it may reasonably require for the purpose of its enquiry.

- I.16 Detailed information is set forth in the main guidance notes, beginning with the Preface.

Senior management responsibilities and internal controls

- I.17 The AML/ATF responsibilities for senior management of an RFI conducting trust business are governed primarily by Proceeds of Crime Act 1997 (POCA 1997), SEA Act 2008, Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA 2004), and Regulations 16, 17 and 19 of the Proceeds of Crime (Money Laundering) Regulations 1998 (the Regulations).
- I.18 The AML/ATF internal control requirements for RFIs conducting trust business are governed primarily by Regulations 12, 16 and 18 of the Regulations.
- I.19 Regulation 19 of the Regulations provides that failure to comply with the requirements of specified Regulations is a criminal offence and carries with it significant penalties. On summary conviction, the penalty is a fine of up to \$50,000. Where conviction occurs on indictment, penalties include a fine of up to \$750,000, imprisonment for a term of two years, or both.
- I.20 Section 20 of the SEA Act 2008 empowers the BMA to impose a penalty on an RFI of up to \$500,000 for each failure to comply with specified Regulations. The SEA Act 2008 also provides for a number of criminal offences, including carrying on business without being registered pursuant to Section 33 of the SEA Act 2008.
- I.21 Under the Acts and Regulations of Bermuda, senior management in all RFIs must:
- Ensure compliance with the Acts and Regulations;
 - Identify, assess and effectively mitigate the ML/TF risks the RFI faces amongst its customers, products, services, transactions, delivery channels, outsourcing arrangements and geographic connections;
 - Ensure that risk assessment findings are maintained up to date;

- Appoint a Compliance Officer at the managerial level to oversee the establishment, maintenance and effectiveness of the RFI's AML/ATF policies, procedures and controls;
 - Appoint a Reporting Officer;
 - Screen employees against high standards;
 - Ensure that adequate resources are devoted to the RFI's AML/ATF policies, procedures and controls;
 - At least once per calendar year, audit and periodically test the RFI's AML/ATF policies, procedures and controls for effectiveness; and
 - Recognise potential personal liability if legal obligations are not met.
- I.22 RFI's must establish and maintain detailed policies, procedures and controls that are adequate and appropriate to forestall and prevent operations related to ML/TF.
- I.23 Specific requirements for an RFI's detailed policies, procedures and controls are set forth in Chapters 2 through 11 of the main guidance notes.
- I.24 Detailed information is set forth in *Chapter 1: Senior Management Responsibilities and Internal Controls* of the main guidance notes.

Risk-based approach for RFI's conducting trust business

- I.25 RFI's conducting trust business must employ a risk-based approach in determining:
- Appropriate levels of customer due diligence (CDD) measures;
 - Proportionate risk-mitigation measures to prevent the abuse of the RFI's products, services and delivery channels for ML/TF purposes;
 - The scope and frequency of on-going monitoring; and
 - Measures for detecting and reporting suspicious activity.
- I.26 The purpose of an RFI applying a risk-based approach is to balance the cost of AML/ATF compliance resources with a realistic assessment of the risk of the RFI being used in connection with ML/TF. A risk-based approach focuses resources and efforts where they are needed and where they have the greatest impact in preventing and suppressing ML/TF.
- I.27 Effective risk mitigation is dependent on the RFI's identification and assessment of its risks. The higher the risk an RFI faces from any particular combination of

customer, product, service, transaction, delivery channel or geographic connection, the more extensive and/or rigorous the RFI's mitigation measures must be.

- I.28 Although RFIs conducting trust business should target compliance resources toward higher-risk situations, they must also continue to apply risk mitigation measures to any standard and lower-risk situations, commensurate with the risks identified. The fact that a customer or transaction is assessed as being lower risk does not mean the customer or transaction is not involved in ML/TF.
- I.29 Detailed information on the requirement that RFIs use a risk-based approach to mitigate the risks of being used in connection with ML/TF is set forth in ***Chapter 2: Risk-Based Approach*** of the main guidance notes.

ML/TF risks in the provision of trustee services

- I.30 Using the risk-based approach, each RFI conducting trust business should determine the amount of ML/TF risk it will accept in pursuit of its business goals.
- I.31 Nothing in the Acts or Regulations prevents an RFI from deliberately choosing to accept higher-risk trust business. Each RFI must, however, ensure that it has the capacity and expertise to apply risk mitigation measures that are commensurate with the risks it faces, and that it does effectively apply those measures.
- I.32 Generally, the level of ML/TF risk associated with trustee services is higher than that associated with standard retail banking. Trusts will often involve numerous persons, including settlors, beneficiaries, trustees, co-trustees, third party controllers, such as enforcers, promoters or protectors, and other persons with a range of rights and responsibilities. The persons connected with a trust may be individuals, legal entities, other trusts or other legal arrangements, and they may be located in more than one jurisdiction.
- I.33 RFIs conducting trust business should take note of the heightened ML/TF risks that arise when a settlor, trustee or other person associated with the trust withholds or otherwise acts to obscure any of the following:
- The true nature and intended purpose of the trust;
 - The true nature and intended purpose of the trust's business relationship with the RFI; or
 - Information on the person(s) truly intended to benefit from the trust.

I.34 Specific indicators of higher risk in trust business are discussed in detail in paragraphs I.167 through I.173 of this annex.

Customer due diligence

I.35 RFIs conducting trust business must carry CDD.

I.36 Detailed information on CDD is set forth in *Chapters 3, 4, and 5* of the main guidance notes, and paragraphs I.35 through I.129 of this annex.

I.37 RFIs need to know the identities of their trust customers, and the nature and intended purpose of their trust customer's activities.

I.38 Carrying out CDD allows RFIs to:

- Guard against impersonation and other fraud by being satisfied that customers are who they say they are;
- Know whether a customer is acting on behalf of another;
- Identify any legal barriers (e.g. international sanctions) to providing the product or service requested;
- Maintain a sound basis for identifying, limiting and controlling risk exposure;
- Avoid committing offences under POCA and ATFA relating to ML/TF; and
- Assist law enforcement by providing information on trust customers or activities being investigated.

I.39 CDD measures that must be carried out include:

- Understanding nature and intended purpose of a trust and its business relationship with the RFI;
- Understanding the ownership and control structure of the trust and its associated persons;
- Identifying a trust company's customers and verifying the identity of those customers;
- Identifying a trust company's individual beneficial owners and taking reasonable steps to verify the identity of those individuals; and
- Identifying the source of wealth and source of funds associated with the trust (see paragraphs 5.110 through 5.113 of the main guidance notes).

I.40 Detailed information on CDD for trusts and other legal arrangements is set forth in paragraphs 4.102 through 4.121 of the main guidance notes.

Nature and intended purpose of the trust and the trust's business relationship with the RFI

I.41 An RFI must understand the nature and intended purpose of each proposed business relationship or transaction. In some instances the nature and intended purpose of a proposed business relationship may appear self-evident. Nonetheless, an RFI must obtain information that enables it to document and categorise the nature, purpose, size and complexity of the business relationship, such that it can be effectively monitored.

I.42 To obtain an understanding sufficient to monitor a trust business relationship or transaction, an RFI should collect information, including, but not limited to:

- The nature and intended purpose of the trust;
- The occupation of the settlor or similar person(s);
- The assets to be held or managed by the trust;
- The source of wealth and source of funds to be used in the trust relationship (see paragraphs 5.110 through 5.113 of the main guidance notes);
- Documentation evidencing the relationships between the persons connected with the trust and the ultimate individual beneficial owner(s);
- The anticipated type, volume, value and nature of the activity that is likely to be undertaken through the trust business relationship;
- The geographic connections of the trust, its activities, and the persons connected with the trust (see paragraph I.173 of the main guidance notes); and
- Any issues that arose in relation to the trust prior to an RFI's take-over from a previous trustee.

Definition of customer in a trust business context

I.43 An RFI's customer is generally the private individual or individuals with or for whom a business relationship is established, or with or for whom a transaction is carried out.

I.44 In the context of trust business and business involving similar legal arrangements, the trust customer most often has no legal personality. Instead, the trust customer involves a number of persons, such as settlors, beneficiaries, trustees, co-trustees, third party controllers, such as enforcers, promoters or protectors, and any other

- persons connected with the trust. Persons connected with the trust should be understood to include other regulated agents of, and service providers to, the trust, including investment advisors and managers, accountants and tax advisors. An RFI must therefore identify not only the trust itself, but also the persons who are party to the trust and its relationship with the RFI.
- I.45 The persons connected with a trust, and who are therefore customers, may change at different points in time, including for example:
- At the time the trust is executed;
 - At the time any additional assets are contributed to, or distributed from, the trust;
 - At the time of any addition, removal, or change in status, rights or powers of any settlor, beneficiary, trustee, co-trustee, third party controller, such as an enforcer, promoter or protector, or any other person connected with the trust; and
 - At the time an RFI becomes an additional or replacement trustee of an existing trust.
- I.46 At a minimum, RFIs must treat the settlor(s) and trustee(s) as trust customers. RFIs must also treat any “effective” settlor, whether or not an actual settlor, as a customer.
- I.47 In addition, where required due to the structure of the trust or an RFI’s ML/TF risk assessments, RFIs must treat any co-trustees, third party controllers, such as enforcers, promoters or protectors, and any other persons connected with the trust, as trust customers.
- I.48 RFIs should note that persons meeting any of the definitions of beneficial owner in paragraphs I.50 through I.70 below are also subject to CDD.
- I.49 Detailed information on the meaning of customer, business relationship and occasional transaction is set forth in *Chapter 4: Standard Customer Due Diligence Measures* of the main guidance notes.
- Definition of beneficial owner in a trust business context
- I.50 Regulation 3(3) of the Regulations defines the beneficial owner(s) of a trust as:

- a) Any individual who is entitled to a specified interest in at least 25% of the capital of the trust;
- b) As respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates; and
- c) Any individual who has control over the trust.

I.51 RFI should be aware that an individual may fall under Regulation 3(3) of the Regulations due to his or her position within, or relationship with, a legal person or legal arrangement.

I.52 Where a legal person, trust or other legal arrangement is a settlor, beneficiary, trustee, co-trustee, third party controller, such as an enforcer, promoter or protector, or any other person connected with the trust, RFI should assess whether any individual who owns or controls such a legal person or legal arrangement falls under Regulation 3(3).

Specified interest

I.53 Under Regulation 3(4) of the Regulations, an individual has a specified interest if the interest is vested and in possession, remainder or reversion. A specified interest may be either defeasible or indefeasible.

I.54 A *condition precedent* is a provision in a trust instrument that prevents the vesting of an interest until an event or state of affairs occurs or fails to occur.

I.55 A *condition subsequent* is a provision in a trust instrument that brings an end to an interest or power due to the occurrence or non-occurrence of an event or state of affairs.

I.56 A beneficiary has a *defeasible interest* where, without the consent of the beneficiary, the interest can be terminated in whole or in part by the occurrence of an event, such as the failure of a condition subsequent or a trustee's exercise of a power to terminate or vary the interest.

I.57 A beneficiary has an *indefeasible interest* where, without the consent of the beneficiary, the interest cannot be terminated in whole or in part by the occurrence or nonoccurrence of an event or state of affairs.

- I.58 A beneficiary has an *interest in possession* where the beneficiary has the right to enjoy the use or possession of the trust property. An interest in possession of a fund may relate either to an interest in the capital of the fund, or in the income of the fund.
- I.59 A beneficiary has an *interest in remainder* where the beneficiary will have the right to enjoy the use or possession of the trust property only after the termination of one or more prior interests in possession. An interest in remainder of a fund may relate, for example, to an interest in the capital of the fund that will become possessory only after the termination of all prior interests in the income of the fund.
- I.60 A settlor has an *interest in reversion* where the settlor will receive any part of the fund at the end of a trust, including for example, where the trust fails and there are no beneficiaries with an interest in remainder.
- I.61 A beneficiary has a *vested interest* where the interest is not subject to any condition precedent. A vested interest may be under the control of a trustee, but it may not be taken away by a third party.

Class of persons to benefit

- I.62 Regulation 3(3)(b) of the Regulations applies to any trust that includes persons who do not fall under Regulation 3(3)(a) of the Regulations.
- I.63 Beneficiaries or objects of discretionary trusts fall under Regulation 3(3)(b) of the Regulations.
- I.64 The identification of a class of beneficiaries is generally done using a description, for example:
- The children and remoter issue of X;
 - The grandchildren of X;
 - Charity X;
 - The employees of company X;
 - Pension holders and their dependents; or
 - Unit holders.

Control over the trust

- I.65 Regulation 3(4) of the Regulations sets forth the meaning of control over a trust. Control is a power under the trust instrument, or by law, that may be exercised
- Alone;
 - Jointly with another person; or
 - With the consent of another person to do any of the following:
 - Dispose of, advance, lend, invest, pay or apply trust property;
 - Vary the trust;
 - Add or remove a person as a beneficiary or to or from a class of beneficiaries;
 - Appoint or remove trustees; or
 - Direct, withhold consent to or veto the exercise of a power such as any of those mentioned in this paragraph.
- I.66 RFIs should understand references in the main guidance notes to “trustees or equivalent persons” to refer to persons exercising control over a trust or other legal arrangement.
- I.67 Trustees and co-trustees, whether licensed or not, have prima facie control over a trust. Where an RFI maintains trust records for any licensed or unlicensed trustee, the RFI should treat the trustee as a customer. Where an RFI is a co-trustee, it should treat any other licensed or unlicensed co-trustee as a customer.
- I.68 Additional persons who may have control over a trust include, but are not limited to, any settlor, beneficiary, third party controller, such as an enforcer, promoter or protector, and any other person connected with the trust, including other regulated agents of, and service providers to, the trust, such as investment advisors and managers, accountants and tax advisors.
- I.69 Regulation 3(5)(b) of the Regulations specifically provides that control cannot be solely as a result of:
- (i) An individual’s consent being required in accordance with section 24(1)(c) of the Trustee Act 1975 (power of advancement); or
 - (ii) The power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust.

- I.70 Where the situations described in Regulation 3(5)(b) of the Regulations arise, the persons involved may be beneficiaries under the terms of Regulation 3(3)(a) and (b) of the Regulations. RFI should treat them accordingly.

Identifying and verifying trust customers and beneficial owners

- I.71 Full information on identifying and verifying individuals, legal persons, trusts and other legal arrangements is set forth in **Chapter 4: Standard Customer Due Diligence Measures** of the main guidance notes.

Trust identification information

- I.72 RFI must obtain the following identification information in relation to each customer involving a trust or other legal arrangement:

- Full name of the trust or other legal arrangement;
- Date and place of establishment;
- Registered address and, if different, mailing address;
- Legal form, nature and purpose (e.g. fixed interest, discretionary, testamentary, purpose, bare);
- Control and ownership structures of the trust and any underlying legal persons, trusts or other legal arrangements; and
- Official identification number (where applicable).

- I.73 RFI must verify the following in relation to each trust or legal arrangement:

- Full name of the trust or other legal arrangement;
- Date and place of establishment;
- Legal form, nature and purpose (e.g. discretionary, testamentary, bare);
- Control and ownership structures;
- Official identification number (where applicable); and
- Subject to paragraphs 4.117 and 4.118 of the main guidance notes, the identity of all trustees and equivalent persons controlling or having power to direct the activities of the trust or other legal arrangement.

Obtaining and verifying trust customer identification information

- I.74 In line with the main guidance notes for private individuals and legal persons contained in **Chapter 4, Standard Customer Due Diligence Measures**, RFI must

obtain and verify identification information for each person who is a customer in the trust business context.

- I.75 Using a risk-based approach, and in line with the main guidance notes, RFIs conducting trust business must identify but may elect not to verify selected service providers to the trust, such as investment advisors or managers, accountants or tax advisors.
- I.76 A person who is a customer in the trust business context may be an individual, a legal person, another trust or other legal arrangement. For each type of customer, an RFI should follow the identification and verification requirements in ***Chapter 4: Standard Customer Due Diligence Measures*** of the main guidance notes.
- I.77 RFIs conducting trust business should seek to obtain and verify the identity of the individuals who ultimately control and own any trust customer that is a legal person, another trust or another type of legal arrangement.

Obtaining and verifying beneficial owner information

- I.78 In addition, and in line with the guidance for private individuals and legal persons, RFIs must obtain and verify identification information for all known beneficiaries.
- I.79 A beneficiary is known if the beneficiary can be identified from the terms of the trust instruments.
- I.80 Where a trust is discretionary, and a large number of beneficiaries are named in the trust instrument, an RFI must obtain and verify identification information for:
- The settlor, or similar person(s);
 - The trustee and any co-trustees;
 - Any third party controller, such as an enforcer, promoter or protector, and any other person connected with the trust;
 - The named beneficiaries; and
 - Any beneficiary prior to making any distribution.
- I.81 The beneficiaries of a trust may include one or more individuals falling under Regulation 3(3)(a) of the Regulations, as well as beneficiaries falling under Regulation 3(3)(b) of the Regulations. In such cases, RFIs should obtain and

verify the identity of any individual falling under Regulation 3(3)(a) of the Regulations, and should treat the remaining beneficiaries as a class.

- I.82 Where the beneficiaries of a trust are one or more classes, an RFI must take reasonable steps to ascertain the identity of the members of each class or each part of a class that is most likely to receive trust property in the foreseeable future.
- I.83 Where a newly created trust benefits, for example, the children of X, there is only one class for which an RFI must obtain and verify identity. The RFI must:
- Identify and verify each settlor, trustee, co-trustee, third party controller, such as an enforcer, promoter or protector, and any other person connected with the trust;
 - Identify the children of X; and
 - Subsequently verify the identity of the children of X prior to allowing the exercise of any vested interest.
- I.84 Where a newly created trust benefits, for example, the adult children of X, and after their deaths, the adult grandchildren of X, and after their deaths, a charity, the children of X are the class most likely to receive trust property in the foreseeable future. The RFI must:
- Identify and verify each settlor, trustee, co-trustee, third party controller, such as an enforcer, promoter or protector, and any other person connected with the trust;
 - Identify the children of X; and
 - Subsequently verify the identity of each member of each class prior to allowing the exercise of any vested interest.
- I.85 Where a newly created trust benefits, for example, the spouse of X, the adult children of X, their spouses and civil partners, the adult grandchildren of X, and their spouses and civil partners, the classes most likely to receive trust property in the foreseeable future are the spouse, the adult children, and their spouses and civil partners. The RFI must:
- Identify and verify each settlor, trustee, co-trustee, third party controller, such as an enforcer, promoter or protector, and any other person connected with the trust;
 - Identify the spouse of X, any adult children of X, and any of their spouses and partners; and

- Subsequently verify the identity of each member of each class prior to allowing the exercise of any vested interest.
- I.86 Where the beneficiaries of a trust do not reach the 25% specified interest threshold, but are not identified as a class using a description, the RFI may make a reasonable choice between treating the beneficiaries as falling under either Regulation 3(3)(a), (b) or (c) of the Regulations.
- I.87 RFIs should have regard to paragraph I.33 and ensure that any trust structure, including the use of any legal person, trust or other legal arrangement, does not permit any true beneficial owner to fall outside of the scope of Regulation 3(3) of the Regulations.

Timing of customer due diligence

- I.88 An RFI must apply CDD measures when it:
- Establishes a business relationship;
 - Carries out an occasional transaction in an amount of \$15,000 or more, whether the transaction is carried out in a single operation or several operations which appear to be linked, or carries out any wire transfer in an amount of \$1,000 or more (see *Chapter 8: Wire Transfers* of the main guidance notes);
 - Suspects money laundering or terrorist financing; or
 - Doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.
- I.89 Without exception, RFIs conducting trust business should always identify the customer and any known beneficial owners, the nature and intended purpose of the business relationship, and the source of wealth and source of funds before the establishment of a business relationship or the carrying out of an occasional transaction. RFIs conducting trust business may not conduct CDD during or after the establishment of a business relationship. See paragraph 3.17 of the main guidance notes.
- I.90 RFIs must also verify the identity of the customer and any beneficial owners. Verification should ordinarily take place:
- Before the trust is executed;
 - Before the RFI is appointed in place of a retiring trustee;
 - Before the RFI becomes co-trustee;

- Before the RFI is appointed to act as protector or enforcer;
- Before the RFI agrees to maintain trust records;
- Before any distribution is made out of the trust, and before allowing the exercise of any other vested interest;
- Before a new beneficiary or class of beneficiaries is added;
- When a new party becomes entitled to exercise control; and
- Subsequently when there is any change in information previously provided, or when otherwise deemed necessary due to information obtained through on-going monitoring.

I.91 Each time a new or existing settlor adds assets to the property of the trust, an RFI should obtain and verify the source of the funds and the objectives of the settlor.

I.92 In order to keep aging identity information accurate and up-to-date, RFIs should take advantage of opportunities to obtain updated documentation. Such opportunities include, but are not limited to:

- A change in a settlor's, trustee's or beneficiary's residential address;
- A change in the settlor's business address;
- The appointment of a new co-trustee;
- The appointment of a new protector or enforcer;
- The expiration of a document establishing identity; and
- The addition or exclusion of beneficiaries.

I.93 Detailed information on the timing of CDD measures is set forth in *Chapter 3: Overview of Customer Due Diligence* of the main guidance notes.

Previous due diligence and reliance on third parties

I.94 An RFI that is an additional or successor trustee needs to know that it can rely on CDD conducted by others.

I.95 Paragraphs 5.118 through 5.148 of the main guidance notes set forth the circumstances in which reliance on a third party is permissible. Paragraphs 3.22 through 3.24 of the main guidance notes provide additional relevant guidance. In any reliance situation, however, the relying RFI retains responsibility for any failure to comply with a requirement of the Regulations, as this responsibility cannot be delegated.

- I.96 Before an RFI conducting trust business can rely on CDD conducted by a third party, the RFI must determine whether the third party carried out at least the standard level of customer verification.
- I.97 An RFI that is an additional or successor trustee should enquire of the existing or predecessor trustee(s) whether appropriate enquiries were made of the settlor or settlors at the time the trust was created, and at the time any assets were added to the trust.
- I.98 An RFI that is an additional or successor trustee should obtain sight of and retain record of the original due diligence documentation.
- I.99 Where an RFI determines that the information it has received is adequate, and all other criteria for relying upon a third party have been met, the RFI may determine that it has satisfied its CDD obligations.
- I.100 Where, however, an RFI determines that relevant documentation is not available, or is inadequate, the RFI will need to seek additional documentation.
- I.101 Where the settlor is still living, the RFI should obtain the relevant documentation from the settlor(s). Where a trust was made by a declaration of trust and no settlor is named on the face of the deed, the RFI should determine who contributed the assets and obtain the relevant documentation from that person. Where there was a corporate settlor, CDD should also be conducted on the corporate entity, and on any individual asset contributor.
- I.102 Where the settlor is deceased, or where a corporate settlor is no longer in existence, the RFI should make reasonable enquiries about the settlor of such persons as may be appropriate in the circumstances. Potential sources of information include the existing or predecessor trustees or the beneficiaries.
- I.103 Where the beneficiaries are relatives of a deceased settlor, appropriate enquiry of the oldest beneficiaries may be the most fruitful. Where a settlor is deceased, the RFI should obtain a copy of the death certificate and conduct CDD on the other persons connected with the trust.

Refusing or terminating trust business

- I.104 If for any reason an RFI is unable to apply CDD measures in relation to a customer, Regulation 9 of the Regulations establishes that the RFI must:

- In the case of a proposed business relationship or transaction, not establish that business relationship and not carry out that occasional transaction with or on behalf of the customer;
 - In the case of an existing business relationship, terminate that business relationship with the customer; and
 - Consider making a report to the Financial Intelligence Agency, in accordance with its obligations under POCA and the ATFA.
- I.105 Where an RFI decides that a trust relationship must be terminated due to an inability to complete CDD, the RFI should take appropriate steps to stop acting as trustee of the trust or, as appropriate, not proceed with any proposed distribution, exercise of a vested right, or other trustee service such as changing beneficiaries, entering into a particular transaction or agreement or varying the trust to grant powers to a new person.
- I.106 Because there may be legal ramifications for exiting the trust relationship, the RFI may decide to:
- Communicate with the settlor, beneficiaries and any other relevant persons about terminating the relationship;
 - Ask the individual(s) or person(s) with control, for example, the protector or enforcer, to remove the RFI as trustee and to appoint a successor trustee;
 - Resign as trustee; or
 - Apply to the court to be removed.
- I.107 Where an RFI is unable to apply CDD on the relevant persons, wherever possible, the RFI should resign its trusteeship.
- I.108 However, an RFI conducting trust business may be a fiduciary and the terms of the trust instrument, legislation and common law principles may limit its ability to resign without a continuing or successor trustee being in place.
- I.109 In addition, where one beneficiary fails to comply with a request for information, while the remaining beneficiaries comply, there may be no need to cease acting as trustee. In such situations, the RFI may not need to resign its trusteeship immediately, but may postpone providing any service in relation to that uncooperative beneficiary or, as appropriate, the whole trust, until all required CDD is carried out.

- I.110 Where a licensed undertaking is unable to complete CDD and decides to resign as trustee or postpone providing a service as trustee, the licensed undertaking should consider whether it is required to make a Suspicious Activity Report to the Financial Intelligence Agency.
- I.111 Where an RFI declines or terminates business that it knows is, or suspects might be, criminal in intent or origin, the RFI should refrain from referring such declined business to another person.

Trust business transactions involving cash

- I.112 Paragraph 7.14 of the main guidance notes states that each RFI should establish norms for cash transactions and procedures for the identification of unusual cash transactions or proposed cash transactions.
- I.113 In the context of trust business, RFIs should limit the acceptance or delivery of cash or other bearer negotiable stores of value to *de minimus* amounts. In extremely rare circumstances where this guidance is not followed, an RFI should be prepared to demonstrate that it has determined and applied appropriate risk-mitigation measures, and documented relevant policies, procedures and controls applicable to trust managers. Any trust business cash transaction that is not of a *de minimus* amount should be reported to the RFI's Reporting Officer.

Applicability of simplified due diligence to trust business

- I.114 Simplified due diligence involves the application of reduced or simplified CDD measures in specified circumstances.
- I.115 RFIs may consider applying reduced or simplified due diligence measures only where the risk assessment process results in a finding of lower than standard risk.
- I.116 As noted in paragraph I.32, the level of risk associated with trustee services is generally higher than that associated with standard retail banking. As a consequence, an RFI conducting trust business may apply simplified due diligence only in limited situations, including identifying and verifying:
- Companies listed on an appointed stock exchange (see paragraphs 4.95 through 4.96 of the main guidance notes); and
 - Employee pension schemes (see paragraphs 4.136 through 4.141 of the main guidance notes).

- I.117 Where a trust involves an entity for which simplified due diligence is appropriate, RFIs must nonetheless adhere to the guidance notes in identifying and verifying settlors, beneficiaries, trustees, co-trustees, third party controllers, such as enforcers, promoters or protectors, or any other persons connected with the trust.
- I.118 Detailed information on the applicability of simplified due diligence is set forth in paragraphs 3.17 and 5.1 through 5.14 of the main guidance notes.

Enhanced due diligence for trust business

- I.119 Enhanced due diligence is the application of additional CDD measures where necessary to ensure that the measures in place are commensurate with higher ML/TF risks.
- I.120 Regulation 11 of the Regulations requires RFIs to apply enhanced due diligence in all situations where a customer or the products, services, delivery channels, or geographic connections with which the customer engages present a higher than standard risk of money laundering or terrorist financing.
- I.121 In addition, enhanced due diligence must be applied in each of the following circumstances:
- The business relationship or occasional transaction has a connection with a country or territory that represents a higher risk of money laundering, corruption, terrorist financing or being subject to international sanctions (see paragraphs 5.19 through 5.20 of the main guidance notes);
 - The customer or beneficial owner has not been physically present for identification purposes (see paragraph 5.26 through 5.30 of the main guidance notes); and
 - The business relationship or occasional transaction involves a Politically Exposed Person (see paragraphs 5.97 through 5.117 of the main guidance notes).
- I.122 Where an RFI determines that enhanced due diligence measures are necessary, it must apply specific and adequate measures to compensate for the higher risk of money laundering.
- I.123 In selecting the appropriate additional measures to be applied, RFIs should consider obtaining additional information and approvals, including one or more of the following:

- Additional information on the customer, such as occupation, volume of assets or net wealth, and information available through public databases;
- Additional information on the nature and purpose of the business relationship (see paragraphs 4.1 through 4.4 of the main guidance notes);
- Additional information on the source of wealth and source of funds of the customer (see paragraphs 5.110 through 5.113 of the main guidance notes);
- Additional information on the reasons for planned or completed transactions; and
- Approval of senior management to commence or continue the business relationship (see paragraph 5.109 of the main guidance notes).

I.124 In addition, RFIs should consider applying additional measures, such as:

- Updating more frequently the identification and verification data for the customer, its beneficial owner(s), and any other persons with an ownership or controlling interest;
- Conducting enhanced monitoring of the business relationship by increasing the number and frequency of controls applied and by identifying patterns of activity requiring further examination; and
- Requiring the first payment to be carried out through an account in the customer's name via an RFI subject to the Regulations, or via an institution that is situated in a country or territory other than Bermuda that imposes requirements equivalent to those in Bermuda, that effectively implements those requirements, and that is supervised for effective compliance with those requirements;

I.125 Detailed information on enhanced due diligence is set forth in *Chapter 5: Non-Standard Customer Due Diligence Measures* of the main guidance notes.

I.126 Specific indicators of higher risk in trust business are discussed in greater detail in paragraphs I.167 through I.173 of this annex.

International sanctions

I.127 RFIs conducting trust business should implement a sanctions compliance programme in line with the guidance set forth in *Chapter 6: International Sanctions* of the main guidance notes.

- I.128 RFIs should determine whether any persons connected with a trust, and the individuals behind any such persons that are legal entities, trusts or other legal arrangements, are sanctions targets.
- I.129 RFIs must be aware that, in contrast to AML/ATF measures, which permit firms some flexibility in setting their own timetables for verifying and updating CDD information, an RFI risks breaching a sanctions obligation as soon as a person, entity or good is listed under a sanctions regime in effect in Bermuda. In addition, whereas an RFI may choose to transact with a higher-risk individual or entity, it may not transact with any individual or entity subject to the Bermuda sanctions regime without first applying for and obtaining an appropriate license.

On-going monitoring for trusts

- I.130 Regulations 7, 11(4)(c), 13(4), 16 and 18 of the Regulations require RFIs to conduct on-going monitoring of the business relationship with their customers.
- I.131 On-going monitoring in the context of trust business supports several objectives:
- Maintaining a proper understanding of a trust customer’s activities;
 - Ensuring that CDD documents and other records are as accurate and up-to-date as possible;
 - Providing accurate inputs for the RFI’s risk assessment processes;
 - Testing the outcomes of the RFI’s risk assessment processes; and
 - Detecting and scrutinizing unusual or suspicious conduct in relation to a trust.
- I.132 Failure to adequately monitor a trust customer’s business relationship could expose an RFI to abuse by criminals and may call into question the adequacy of the RFI’s AML/ATF policies, procedures and controls and the integrity or fitness and properness of the RFI’s management.
- I.133 On-going monitoring of a business relationship includes:
- Scrutinizing transactions undertaken throughout the course of the relationship (including, where necessary, the source of wealth and/or source of funds) to ensure that the transactions are consistent with the RFI’s knowledge of the trust customer, its beneficiaries, and the customer profile;
 - Investigating the background and purpose of all complex or unusually large transactions, and unusual patterns of transactions which have no apparent economic or lawful purpose and recording in writing the findings of the

investigation; and

- Reviewing existing documents, data and information to ensure that they are accurate, up-to-date, adequate, and relevant for the purpose of applying CDD measures to trust customers and beneficiaries.

I.134 On-going monitoring must be carried out on a risk-sensitive basis. Higher-risk trust customers and beneficiaries must be subjected to enhanced due diligence and more frequent and/or intensive on-going monitoring.

I.135 Bearing in mind that some criminal activity may be so widespread as to appear to be the norm, RFIs should establish norms for lawful transactions and conduct in relation to trust customers and beneficiaries. See paragraphs 7.11 through 7.14 of the main guidance notes.

I.136 Once an RFI has established norms for lawful transactions and conduct, it must monitor the business relationship, including transactions, patterns of transactions, and conduct by trust customers and beneficiaries to identify transactions and conduct falling outside of the norm.

I.137 The determination of norms for a category of trust customers or beneficiaries should be based initially upon the information obtained in order to understand the nature and intended purpose of the trust and its business relationship with the RFI. See paragraph I.42.

I.138 Monitoring may take place both in real time and after the event, and it may be manual or automated. Irrespective, any system of monitoring should ensure at its core that:

- Transactions and conduct are flagged in exception reports for further examination;
- The exception reports are reviewed promptly by the appropriate person(s); and
- Appropriate and proportionate action is taken to reduce the possibility of ML/TF occurring without detection.

I.139 Where an RFI accepts higher-risk trust business, it must ensure that it has the capacity and expertise to effectively conduct on-going monitoring of the trust and its business relationship with the RFI. See paragraph I.31.

I.140 Detailed information on on-going monitoring is set forth in *Chapter 7: On-Going Monitoring* of the guidance notes.

Suspicious activity reporting

- I.141 The suspicious activity reporting requirements for RFIs are governed primarily by Sections 43 through 48 of POCA 1997, Sections 5 through 12 of ATFA 2004, and Regulations 16 and 17 of the Regulations.
- I.142 RFIs conducting trust business must put in place appropriate policies and procedures to ensure that knowledge, suspicion, and reasonable grounds to know or suspect that funds or assets are the proceeds of crime, or that a person is involved in money laundering or terrorist financing, are identified, enquired into, documented, and reported.
- I.143 The definitions of knowledge, suspicion, and reasonable grounds to know or suspect are set forth in paragraphs 9.6 through 9.10 of the main guidance notes.
- I.144 Many customers will, for perfectly good reasons, have an erratic pattern of transactions or account activity. A transaction or activity that is identified as unusual, therefore, should not be automatically considered suspicious, but should cause the RFI to conduct further, objective enquiries to determine whether or not the transaction or conduct is indeed suspicious.
- I.145 Enquiries into unusual transactions should be in the form of additional CDD measures to ensure an adequate, gap-free understanding of the relationship, including the purpose and nature of the transaction and/or conduct in question.
- I.146 All employees, regardless of whether they have a compliance function, are obliged to report to the Reporting Officer within the RFI each instance in which they have knowledge, suspicion, or reasonable grounds to know or suspect that funds or assets are the proceeds of crime or that a person is involved in money laundering or terrorist financing.
- I.147 An RFI's Reporting Officer must consider each report, in light of all available information, and determine whether it gives rise to knowledge, suspicion, or reasonable grounds to know or suspect that funds or assets are the proceeds of crime or that a person is involved in money laundering or terrorist financing.
- I.148 Where, after evaluating an internal suspicious activity report, the Reporting Officer determines that there is knowledge, suspicion, or reasonable grounds to know or suspect that funds or assets are the proceeds of crime or that a person is

involved in money laundering or terrorist financing, the Reporting Officer must file an external suspicious activity report with the Financial Intelligence Agency.

- I.149 As of October 2011, the FIA no longer accepts any manually submitted suspicious activity reports (including those faxed or emailed). The FIA accepts only those suspicious activity reports that are submitted electronically via the goAML system, which is available at www.fia.bm
- I.150 Where a Reporting Officer considers that an external report should be made urgently, initial notification to the FIA may be made by telephone, but must be followed up by a full suspicious activity report as soon as is reasonably practicable.
- I.151 The FIA is located at 6th Floor, Strata 'G' Building, 30A Church Street, Hamilton HM11 and it can be contacted during office hours on telephone number (441)-292-3422, on fax number (441)-296-3422, or by email at info@fia.bm

Failure to report and tipping-off offenses

- I.152 Where an employee fails to comply with the obligations under Section 46 of POCA 1997 or Schedule 1 of ATFA 2004 to make disclosures to a Reporting Officer and/or to the FIA as soon as is reasonably practicable after information giving rise to knowledge or suspicion comes to the attention of the employee, the employee is liable to criminal prosecution.
- I.153 The criminal sanction, under POCA 1997 and ATFA 2004, for failure to report, is a prison term of up to three years on summary conviction or ten years on conviction on indictment, a fine up to an unlimited amount, or both.
- I.154 Section 47 of POCA 1997 and Section 10 of ATFA 2004 contain tipping-off offences.
- I.155 It is a tipping-off offence under Section 47 of POCA 1997 and Section 10 of ATFA 2004 if a person knows or suspects that an internal or external report has been made to the Reporting Officer or to the FIA and the person discloses to any other person:
- Knowledge or suspicion that a report has been made; and/or
 - Any information or other matter likely to prejudice any investigation that might be conducted following such a disclosure.

- I.156 It is also a tipping-off offence if a person knows or suspects that a police officer is acting, or proposing to act, in connection with an actual or proposed investigation of money laundering or terrorist financing and the person discloses to any other person any information or other matter likely to prejudice the actual or proposed investigation.
- I.157 Any approach to the customer or to an introducing intermediary should be made with due regard to the risk of committing a tipping-off offence. See paragraphs 9.83 through 9.84 of the main guidance notes.
- I.158 Detailed information on suspicious activity reporting, including related offenses and constructive trusts is set forth in *Chapter 9: Suspicious Activity Reporting* of the main guidance notes.

Employee training and awareness

- I.159 The responsibilities of RFIs to ensure appropriate employee training and awareness are governed primarily by Regulations 16 and 18 of the Regulations.
- I.160 RFIs must take appropriate measures to ensure that relevant employees:
- Are aware of the Acts and Regulations relating to ML/TF;
 - Undergo training on how to identify transactions which may be related to ML/TF; and
 - Know how to properly report suspicions regarding transactions that may be related to ML/TF.
- I.161 Each RFI must also ensure that relevant employees receive appropriate training on its AML/ATF policies and procedures relating to:
- Customer due diligence measures
 - On-going monitoring
 - Record-keeping
 - Internal controls; and
 - Risk assessment and management.
- I.162 In a trust business context, training should enable employees to:

- Readily identify trust vehicles that may be structured for ML/TF purposes;
- Effectively vet trust customers and beneficiaries;
- Assess the risks associated with a trust and its customers and beneficiaries; and
- Conduct on-going monitoring of the trust and its business relationship with the RFI.

I.163 Detailed information on employee training and awareness is set forth in *Chapter 10: Employee Training and Awareness* of the main guidance notes.

Record-keeping

I.164 The record-keeping obligations of RFIs are governed primarily by Regulations 15 and 16.

I.165 RFIs must keep specified records for a period of at least five years following the date on which the business relationship ends, or, in the case of an occasional transaction, following the date on which the transaction, or the last in a series of transactions, is completed.

I.166 Detailed information on the records that must be kept is set forth in *Chapter 11: Record-Keeping* of the main guidance notes.

Risk factors for trust business

I.167 In addition to the non-exhaustive list of risk factors set forth in paragraph 2.35 of the main guidance notes, RFIs conducting trust business should consider sector-specific risk factors, including those in paragraphs I.168 through I.173 below, in order to fully assess the ML/TF risks associated with a particular trust. The non-exhaustive list of sector-specific risk factors addresses customers, products, services, transactions, delivery channels, third party service providers and geographic connections

I.168 Customer risk factors include, but are not limited to:

- The appointment of parties as co-trustees with little or no commercial involvement;
- The use of a dummy settlor who, on behalf of the instigator or actual settlor, attempts to settle property into the trust for the purpose of concealing the identity of the actual settlor;

- Requests for a licensed undertaking to make a declaration of trust with no settlor apparent on the face of the deed. This is not uncommon, particularly in commercial trust structures, but RFIs should obtain a rationale;
- Any unexplained relationship between a trust's settlor, beneficial owners, controllers, co-trustees and third parties;
- The lack of readily apparent connection or relationship between the settlor and the beneficiaries. The economic nature of a trust is a mechanism for the settlor to benefit a beneficiary. RFIs should ascertain the settlor's reasons for wanting to benefit a beneficiary with whom he or she seemingly has no connection;
- Requests to add settlors, beneficiaries, protectors, promoters, or third parties who have no reserved power under the trust and are not exercising a delegated function for the trustee;
- Any change in the nature or intended purpose of the trust;
- Unjustified delays in the production of identity documents, underlying company accounts or other requested information;
- Requests to add a third party as a new beneficiary to the trust, particularly where the RFI receives the request as a letter of wishes after the death of the settlor, or after a reasonable period of time following the occurrence of a condition precedent;
- Attempts to remove all existing beneficiaries and add new beneficiaries. This may be a legitimate action, where, for example beneficiaries are excluded due to tax inefficiencies or changes in citizenship. However, the RFI should ensure that any reasons given for such changes are reasonable;
- Situations in which it is difficult to identify the individual beneficiaries of a trust. This includes situations where identification is hindered because the beneficiary of a trust is a legal person or another trust;
- Frequent changes to shareholders, directors or trustees of any underlying legal person, trust or other legal arrangement;
- The unnecessary or excessive use of nominees;
- The unnecessary granting of a power of attorney;
- Any use of a blind trust arrangement to make distributions to an individual who is not named;
- The use of opaque or complex legal persons or arrangements where the customer is not open about their purpose;
- The involvement of any settlor, beneficiary, trustee, co-trustee, third party controller, such as an enforcer, promoter or protector, or any other person connected with the trust who is a politically exposed person (PEP);
- Settlor or beneficiaries that are higher-risk charities or other not-for-profit organisations not subject to effective supervision and monitoring;

- A trust customer that would be subject to regulation in Bermuda, but is not subject to equivalent regulations in its jurisdiction;
- A client who is unwilling or unable to provide satisfactory information to verify the source of wealth or source of funds;
- Levels of assets or transactions that exceed what a reasonable person would expect of a customer with a similar profile; and
- A customer offering to pay extraordinary fees for unusual services, or for services that would not ordinarily warrant such a premium.

I.169 Products and services risk factors include, but are not limited to:

- The unexplained and illogical use of corporate structures, express trusts, nominee shares or the use of bearer negotiable instruments;
- Any request to include unusual or non-standard clauses in a trust instrument, or to enter into supplementary deeds or agreements, that might indicate that the stated purpose of the trust structure is not the true purpose;
- Requests to form or accept business involving a legal arrangement in which a third party, other than the RFI, retains the dispositive power to transfer or dispose of property from the trust without involving the RFI;
- A trust structure in which the settlor and beneficiary appear to be different parties on the face of the deed, but through the use of a legal person, trust or other legal arrangement, they are in fact the same individual and excessive powers are reserved or delegated to that individual in either capacity;
- Requests to create a trust structure, or carry out a transaction with undue complexity, or with no discernible commercial purpose;
- Requests to create a trust structure, or carry out a transaction with undue speed, particularly where the settlor or other person associated with the trust requests that any of the due diligence process be completed after the establishment of the trust, or after the initiation of a transaction; and
- Requests for anonymity. While a trust customer's requests for their business to be conducted discreetly should not automatically be inferred as illegitimate, requests for anonymity may be indicative of higher risk.

I.170 Transaction risk factors include, but are not limited to:

- A trust that, once established, receives sizeable or multiple cash deposits, or deposits from multiple sources;
- Transactions involving gambling, armaments, money service businesses, or cash-intensive businesses, or the proceeds of such categories of business;

- Large cash transactions in circumstances where such a transaction would normally be made by cheque, banker's draft, or wire transfer;
- Trust customers requesting transfers to or from overseas locations with instructions for payment to be made in cash;
- Sizeable third party cheques endorsed in favour of the trust or trust customer;
- Requests for large payments for unspecified services to consultants, employees or other parties;
- Purchase or sale transactions significantly above or below the market price;
- Commercial, private, or real property transactions or services within a trust operation that have no apparent legitimate business, tax, legal, or family governance purpose;
- Unusual, complex or uncharacteristically large transactions;
- Transactions of a size or volume that exceeds what a reasonable person would expect of a customer with a similar profile, or given the nature and stated purpose of the trust;
- Occasional transactions giving rise to suspicion; and
- Requests for distributions to be made to PEPs or higher-risk charities or other not-for-profit organisations not subject to effective supervision and monitoring.

I.171 Delivery channel risk factors include, but are not limited to:

- Non face-to-face relationships with trust customers and beneficiaries;
- Any request to carry out significant transactions using cash, or using any payment or value transfer method that obscures the identity of any of the parties to the transaction; and
- The use of third-party intermediaries, agents or brokers.

I.172 Third party risk factors include, but are not limited to:

- The involvement of any third party in carrying out any AML/ATF function in relation to trust business, including reliance upon, or outsourcing to, any third party that has not been sufficiently reviewed for compliance with paragraphs 5.118 through 5.178 of the main guidance notes;
- Any unexplained relationship between a trust's settlor, beneficial owners, controllers, co-trustees and third parties;
- Requests to add third parties who have no reserved power under the trust and are not exercising a delegated function for the trustee, such that the trust is undermined;
- Requests to add a third party as a new beneficiary to the trust, particularly where the RFI receives the request as a letter of wishes after the death of the

settlor, or after a reasonable period of time following the occurrence of a condition precedent;

- The use of third-party intermediaries, agents or brokers; and
- Requests to form or accept business involving a legal arrangement in which a third party, other than the RFI, retains the dispositive power to transfer or dispose of property from the trust without involving the RFI.

I.173 Geographic risk factors include, but are not limited to:

- A trust established with funds originating from foreign banks in high-risk jurisdictions;
- A settlor, beneficiary, trustee, co-trustee, third party controller, such as an enforcer, promoter or protector, or any other person connected with the trust who is a resident in, or citizen of, a high-risk jurisdiction;
- A trust business transaction to or from a high-risk jurisdiction;
- A non face-to-face trust business transaction initiated from a high-risk jurisdiction; or
- A trust business transaction linked to business in or through a high-risk jurisdiction;
- Trust business involving persons or transactions with a material connection to jurisdiction, entity, person, or activity that is a target of an applicable international sanction; and
- A trust business relationship or transaction for which an RFI's ability to conduct full CDD may be impeded by a jurisdiction's confidentiality, secrecy, privacy, or data protection restrictions.