

Annex VII

Sector-Specific Guidance Notes for Money Service 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-terrorist financing.

ANNEX VII

SECTOR-SPECIFIC GUIDANCE NOTES FOR MONEY SERVICE BUSINESS

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ANNEX VII

SECTOR-SPECIFIC GUIDANCE NOTES FOR MONEY SERVICE BUSINESS

Introduction

- VII.1 This annex sets forth guidance on AML/ATF obligations under the Acts and Regulations of Bermuda that are specific to money service business.
- VII.2 Under Section 2 of the Anti-Terrorism (Financial and Other Measures) Act 2004, Section 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, and Section 42(A) of the Proceeds of Crime Act 1997, persons carrying on money service business within the meaning of Section 2(2) of the Money Service Business Act 2016 are designated as anti-money laundering and anti-terrorist financing (AML/ATF) regulated financial institutions (RFIs).
- VII.3 Under Section 2(2) of the Money Service Business Act 2016, money service business means the business of providing any or all of the following money service business activities to the general public:
- Money transmission services;
 - Cashing cheques which are made payable to customers and guaranteeing cheques;
 - Issuing, selling or redeeming drafts, money orders or traveller's cheques for cash;
 - Payment service business; and
 - Operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.
- VII.4 By amending order, the Minister may add categories of money service business in addition to those set forth in paragraph VII.3
- VII.5 In addition, where a company provides any of the services set forth in paragraph VII.3 as an ancillary service to its clients and does not levy a separate charge, the Authority is not likely to treat such an activity as being within scope of the Act. Examples of such ancillary services include the cashing of hotel guests' personal cheques or redemption of guests' traveller's cheques, or the cashing of customer cheques by a retailer. If there is any uncertainty or concerns in this regard prospective applicants are encouraged to contact the Authority to determine whether they are required to submit an application.
- VII.6 Under Section 8 of the Money Service Business Act 2016 persons conducting money service business must obtain a licence from the Bermuda Monetary Authority (the Authority). However, section 4(4) of the Money Service Business Act 2016 sets forth that an institution carrying on money service business is not subject to the Money Service Business Act 2016 if the institution is licenced under the Banks and Deposit Companies Act 1999. Such an institution is nonetheless an RFI subject to the AML/ATF requirements of Bermuda, unless it is exempted from the licensing requirement as described in paragraph VII.5 (above).

- VII.7 Under Section 9 of POCA 2008, all RFIs must be registered with a competent authority. Where a person provides one of the services listed in paragraph VII.3 and that person does not register with another competent authority, that person is an RFI which must register with the Bermuda Monetary Authority.
- VII.8 All RFIs must comply with the Acts and Regulations, and with the main AML/ATF guidance notes issued by the Authority.
- VII.9 Schedule 1, Section 2(2) of the Money Service Business Act 2016 sets forth that in determining whether an RFI is conducting its business in a prudent manner, the Authority will take into account any failure to comply, among other things, with:
- The Money Service Business Act 2016;
 - The Proceeds of Crime Act 1997;
 - The Anti-Terrorism (Financial and Other Measures) Act 2004;
 - The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (Regulations); and
 - International sanctions in effect in Bermuda.
- VII.10 For the purposes of these guidance notes, the terms “AML/ATF regulated financial institution” and “RFI” should be understood to include persons conducting the money service business described in paragraph VII.3. The term “money service business” should be understood to include any and all of the activities described in paragraph VII.3.
- VII.11 RFIs conducting money service business should read these sector specific guidance notes in conjunction with the main guidance notes for AML/ATF regulated financial institutions on anti-money laundering and anti-terrorist financing. This annex supplements, but does not replace the main guidance notes.
- VII.12 Portions of this annex summarise 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.
- VII.13 Portions of this annex include sector-specific information, such as risk indicators that are particular to money service business. This sector-specific information should be considered as supplementary to the main guidance notes.

Status of the guidance

- VII.14 Approved by the Minister Justice, these guidance notes are issued by the Bermuda Monetary Authority under Section 5(2) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA Act 2008), Section of the Proceeds of Crime Act 1997 (POCA 1997), and Section of the Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA 2004).
- VII.15 These guidance notes are of direct relevance to all senior management, inclusive of the Compliance Officer, and to 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).

- VII.16 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 or Authority 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 Section 20(6) of the SEA Act 2008.
- VII.17 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.
- VII.18 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.
- VII.19 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 Bermuda Monetary Authority.
- VII.20 RFIs should be aware that under Article 16 of the Financial Intelligence Agency Act 2007, the Financial Intelligence Agency 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 Financial Intelligence Agency with such information as it may reasonably require for the purpose of its enquiry. In addition, under Article 54 of the Money Service Business Act 2016, the Authority may require a money service business under investigation for contravention of the Act, and any of its controllers, officers, employees, agents, bankers, auditors, barristers or attorneys, to answer the Authority’s questions, to provide documents to the Authority and to permit the Authority’s entry onto the business’s premises.
- VII.21 Detailed information is set forth in the main guidance notes, beginning with the Preface.

Senior management responsibilities and internal controls

- VII.22 The AML/ATF responsibilities for senior management of an RFI conducting money service business are governed primarily by POCA 1997, SEA Act 2008, ATFA 2004, and the POCA Regulations 2008.
- VII.23 The AML/ATF internal control requirements for RFIs conducting money service business are governed primarily by Regulations 12, 16, 17A, 18 and 18A.
- VII.24 Regulation 19 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.
- VII.25 Section 20 of the SEA Act 2008 empowers the Authority to impose a penalty on an RFI of up to \$500,000 for each failure to comply with specified Regulations. The SEA Act also provides for a

number of criminal offences, including carrying on business without being registered pursuant to Section 9 of the Act.

- VII.26 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 senior management level to oversee the establishment, maintenance and effectiveness of the RFI's AML/ATF policies, procedures and controls;
 - Appoint a Reporting Officer to process disclosures;
 - Screen employees against high standards;
 - Ensure that adequate resources are devoted to the RFI's AML/ATF policies, procedures and controls;
 - 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.
- VII.27 RFIs must establish and maintain detailed policies, procedures and controls that are adequate and appropriate to forestall and prevent operations related to ML/TF.
- VII.28 Under Section 10(2)(c) of the Money Service Business Act 2016, an RFI must include its AML/ATF policies and procedures with its application for a money service business licence.
- VII.29 Under Schedule 1, Section 2(5) of the Money Service Business Act 2016, a money service business must ensure that the structure of any group to which it belongs does not obstruct the conduct of effective consolidated supervision.
- VII.30 Where a Bermuda RFI conducting money service business has agents, branches, subsidiaries or representative offices located in a country or territory other than Bermuda, it must communicate its AML/ATF policies and procedures to all such entities and must ensure that all such entities apply AML/ATF measures at least equivalent to those set out in the Bermuda Acts and Regulations.
- VII.31 Attempts to launder money through money service business may be carried out in several ways:
- Externally, by a customer seeking to place, layer or integrate illicit assets;
 - Internally, by a director, manager or employee, either individually or in collusion with others inside and/or outside the RFI conducting money service business; and
 - Indirectly, by a third party service provider or by an RFI, independent professional, agent or other intermediary facilitating transactions involving illicit assets on behalf of another person.
- VII.32 The majority of this annex addresses attempted money laundering by customers. Money laundering risks involving internal senior management, directors, managers, employees and agents are addressed via fit and proper requirements for money service business in paragraphs VII.37 through VII.40. Money laundering risks involving agents and other third parties are addressed in paragraphs VII.155 through VII.164.

VII.33 Specific requirements for an RFI's detailed policies, procedures and controls are set forth in Chapters 2 through 11 of the main guidance notes.

VII.34 Detailed information is set forth in Chapter 1: Senior Management Responsibilities and Internal Controls.

Links between money service business practices and AML/ATF policies, procedures and controls

VII.35 An RFI's compliance with the Money Service Business Act 2016 achieves some of Bermuda's AML/ATF objectives. These objectives are also met in part through an RFI's compliance with the requirements, principles, standards and procedures set forth in guidance documents, including, but not limited to:

- Code of Practice - Money Service Business Act 2016
- Statement of Principles - Money Service Business Act 2016
- Guidance Notes - Money Service Business Act 2016

VII.36 The requirements of the Acts, Regulations and additional guidance documents described in paragraph VII.35 provide a suitable foundation for the AML/ATF policies, procedures and controls that Bermuda RFIs are required to adopt and implement. An RFI should not presume, however, that its existing processes are sufficient. Each RFI must ensure that it meets each of its AML/ATF obligations under the Bermuda Acts, Regulations and these guidance notes, whether as part of its existing business processes or through separate processes.

Ownership, management, employee and agent checks

VII.37 To guard against potential money laundering involving owners, directors, managers, employees and agents of money service businesses, RFIs conducting money business should screen such persons against high standards in accordance with paragraphs 1.70 through 1.74.

VII.38 RFIs should ensure that screenings are conducted both for the RFI itself and for any agent, intermediary or third party service provider.

VII.39 Where any screening is conducted by a third party, the RFI should have procedures to satisfy itself as to the effectiveness of the screening procedures the third party uses to ensure the competence and probity of each person subject to screening.

VII.40 Working with agents, intermediaries and third party service providers that are licenced and that apply AML/ATF measures at least equivalent to those in Bermuda is likely to reduce the measures a Bermuda RFI conducting investment business will need to undertake in order to meet its screening obligations.

Risk-based approach for RFIs conducting money service business

VII.41 RFIs conducting money service 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 ongoing monitoring; and
 - Measures for detecting and reporting suspicious activity.
- VII.42 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.
- VII.43 The higher the risk an RFI faces from any particular combination of agent, customer, product, service, transaction, delivery channel or geographic connection, the stronger and/or more numerous the RFI's mitigation measures must be.
- VII.44 Each RFI should ensure that it has sufficient capacity and expertise to manage the risks it faces. As risks and understandings of risk evolve, an RFI's capacity and expertise should also evolve proportionally.
- VII.45 An RFI's assessments of the ML/TF risks associated with a customer or transaction should be conducted independently, and in a manner that demonstrates high standards of professionalism extending beyond simply fulfilling the requirements of the Acts and Regulations.
- VII.46 RFIs must use a risk-based approach to determine whether each customer or business relationship entails a heightened level of ML/TF risk.
- VII.47 Although RFIs conducting money service 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.
- VII.48 RFIs should document and be in a position to justify the basis on which they have assessed the level of risk associated with each particular combination of customer, product, service, transaction, delivery channel or geographic connection.
- VII.49 When designing a new product or service, an RFI conducting money service business must assess the risk of the product or service being used for ML/TF.
- VII.50 Managing the money laundering and terrorist financing risks to your business is an ongoing process, not a one-off exercise.
- VII.51 RFIs must document the risk assessment procedures and controls, such as internal compliance audits, as this helps to keep them under regular review. There should be a process for monitoring whether they are working effectively, and how to improve them, for example to reflect changes in the business environment, such as new product types or business models.
- VII.52 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.

ML/TF risks in the conduct of money service business

- VII.53 Using the risk-based approach, each RFI conducting money service business should determine the amount of ML/TF risk it will accept in pursuit of its business goals.
- VII.54 Nothing in the Acts or Regulations prevents an RFI from deliberately choosing to accept higher-risk 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 effectively applies those measures.
- VII.55 The money service business sector is often considered as posing a high risk of ML/TF. Criminals may be attracted to the sector because:
- Money service transactions are often fast, simple and characterised by certainty and finality;
 - Money services often involve cash and bearer instruments;
 - Money services may be cross-border, with a global reach;
 - Money service transactions are often one-off transactions, taking place outside of an established business relationship that could be more readily monitored for uncharacteristic behaviour;
 - Some money services could be used to facilitate anonymity, or to exploit a false identity; and
 - Where money service business involves agents, there is a risk that an agent will not properly follow appropriate AML/ATF policies, procedures and controls.
- VII.56 Although some money service businesses may be abused by criminals for ML/TF purposes, not all money service businesses are inherently high-risk for ML/TF.
- VII.57 The level of inherent risk associated with a particular money service business depends upon a number of factors, including, but not limited to:
- The size of the money service business;
 - The products and services the business offers;
 - The extent to which branches and agents are involved in the business;
 - The complexity of any payment chains used;
 - The geographic areas in which the business operates; and
 - The identity and geographic origin of the business's customers.
- VII.58 The level of inherent ML/TF risk may be lower where the business:
- Primarily markets to customers conducting routine transactions with moderate frequency in low amounts;
 - is an established business with a known operating history;
 - is a money transmitter that only remits funds to domestic entities;
 - Offers only a single line of money services business product or service; or
 - Processes both sides of a transaction primarily for local residents.
- VII.59 The level of inherent ML/TF risk may be higher where the business:
- Deals significantly in cross-border transactions, or one-off transactions that are frequent and/or large in amount;
 - Offers several money services; or

- Is located in, or transacts with or through, a geographic area considered to be high risk for ML/TF or other criminal activity (see paragraph 5.19).
- VII.60 Even if a money service business offers only a single service, the business’s risk assessment should identify categories of customers and transactions that are higher or lower risk within that single service.
- VII.61 ML/TF risks associated with money service business can be reduced through the application of mitigation measures that are tailored to the risks the business identifies.
- VII.62 Examples of measures that may be used to mitigate ML/TF risk that an RFI has identified include, but are not limited to:
- Obtaining and verifying more customer information;
 - Usage limits for the RFI’s products and services;
 - Geographic limits on the use of the RFI’s products and services;
 - Increased monitoring and record-keeping; (monitoring systems should be searchable and record historical transactions using certain key metrics); and
 - Segmentation due diligence and controls.
- VII.63 The mitigation measures noted in paragraph VII.62 are detailed in the context of new payment methods in paragraphs 5.39 through 5.97.
- VII.64 An RFI’s risk assessment must be taken into account when the RFI determines and implements its AML/ATF programme.
- VII.65 Specific indicators of higher risk in money service business are discussed in detail in paragraphs VII.220 through VII.226 of this annex.
- VII.66 When identifying the ML/TF risk factors for a money service business, some of the questions to consider in relation to your customer’s risk assessment include;
- are customers companies, partnerships, or trusts?
 - do you undertake business in areas with a highly transient population?
 - is the customer base stable or does it have a high turnover?
 - do you act for international customers or customers you don’t meet?
 - do you accept business from abroad, particularly those based in, or have beneficial owners in, tax havens, or countries with high levels of corruption, (Transparency International corruption perception index) or where terrorist organisations operate?
 - do you act for entities that have a complex ownership structure or a cross border element?
 - do you accept payments that are made to or received from third parties?
 - how does the way the customer comes to the business affect the risk for:
 - o non face-to-face customers
 - o occasional transactions, as opposed to ongoing business
 - o does the pattern of behaviour, or changes to it, pose a risk
 - o if you accept customer introductions from an agent or third party, have you accepted customers from this source before
- VII.67 When determining the ML/TF risks the following factors will help to determine which customers should be looked at more carefully:

- customers carrying out large one-off cash transactions;
- customers that are not local to the business;
- overseas customers especially from a high risk third country identified by the EU and FATF;
- complex business ownership structures with the potential for concealing beneficiaries; and customers carrying out frequent low value transactions (see guidance on linked transactions)
- customers sending money to high risk countries
- new or existing customers (particularly overseas customers) with a foreign exchange requirement that request a transfer of funds without asking what the rate of exchange will be
- customers requesting a transfer of funds without a foreign exchange requirement. For example sending sterling to another UK person or overseas, or sending Euros from a Euro account in the UK to a person overseas in Euros.

Whether or not a country is high risk is not only determined by whether FATF has designated a country as high risk. Institutions must do their own due diligence to determine what other countries represent a high risk for ML, TF, Corruption.

Customer due diligence

- VII.68 RFI's conducting money service business must carry out customer due diligence (CDD) for customers and beneficial owners.
- VII.69 Detailed information on customer due diligence is set forth in chapters 3, 4 and 5 of the main guidance, and paragraphs VII.68 through VII.165 of this annex.
- VII.70 Carrying out CDD allows RFI's 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 money service customers or activities being investigated.
- VII.71 CDD measures that must be carried out include:
- Identifying and in most cases verifying the identity of the customer;
 - Understanding the purpose and intended nature of the customer's business relationship with the RFI;
 - Identifying the source of wealth and source of funds associated with the customer;
 - Gathering information sufficient to understand the legal form, ownership structure and control structure of the customer under the domestic and/or foreign law governing the customer's formation, registration and operation;

- Identifying and verifying signatories, directors and other persons exercising control over the management of the customer or its relationship with the RFI;
- Identifying and taking reasonable measures to verify the identity of the beneficial owner(s) of the customer; and
- Updating the CDD information at appropriate times.

VII.72 The extent of CDD measures must be determined using a risk-based approach. Higher-risk situations require the application of enhanced due diligence (EDD) measures. Lower-risk situations may be eligible for the application of simplified due diligence (SDD) measures.

VII.73 RFIs must be able to demonstrate to the Authority that the extent of their CDD measures and monitoring is appropriate in view of the risks of ML/TF.

VII.74 Detailed information on CDD for private individuals is set forth in paragraphs 4.5 through 4.74.

VII.75 Detailed information on CDD for legal persons and other legal arrangements is set forth in paragraphs 4.75 through 4.135.

Purpose and intended nature of the customer’s transaction or business relationship with the RFI

VII.76 An RFI must understand the purpose and intended nature of each proposed transaction or business relationship. In some instances the purpose and intended nature may appear self-evident. Nonetheless, using a risk-based approach, an RFI must obtain information that enables it to document and categorise the nature, purpose, size and complexity of the transaction or business relationship.

VII.77 In many instances, a money service business customer will be a private individual. A money service business customer that is a legal person or other legal arrangement may pose a higher inherent risk for ML/TF. For customers that are not individuals, and particularly for customers that provide money services, or are agents for money services, an RFI should collect information, including, but not limited to:

- The customer’s goals for the money service business relationship or transaction;
- The source of wealth and source of funds to be used in the money service business relationship or transaction;
- The anticipated type, volume, value, frequency, duration and nature of the activity that is likely to be undertaken through the money service business relationship or transaction;
- The geographic connections of the customer and each beneficial owner, administrator, advisor, operator, employee, manager, director, agent or other person who is able to exercise significant power over the money service business relationship or occasional transaction;
- The means of payment (cash, wire transfer, other means of payment);
- Whether there is any bearer arrangement, mail holding arrangement or care of (“c/o”) mail arrangement, and if so, the reasons for and details of the arrangement; and
- Whether any payments are to be made to, through, or by third parties or agents, and if so, the reasons for and details of the request.

One-off transactions, occasional transactions and business relationships

- VII.78 To properly apply CDD, RFIs should distinguish between one-off transactions, occasional transactions and transactions that take place as part of an ongoing business relationship.
- VII.79 The term ‘one-off transaction’ means a transaction carried out outside of a business relationship, regardless of the amount of the transaction.
- VII.80 The term ‘occasional transaction’ means a one-off transaction, amounting to \$15,000 or more, whether the transaction is carried out in a single operation or several operations that appear to be linked. The term ‘occasional transaction’ also means any wire transfer or money transmission carried out in an amount greater than \$1,000. The values described in this paragraph refer to the gross value of the transaction, not including the value of any commissions, fees or charges.
- VII.81 The Regulations define a ‘business relationship’ as a business, professional or commercial relationship between an RFI and a customer, which, at the time contact is first made, the RFI expects to have an element of duration. A business relationship is also formed where the expectation of duration is not initially present, but develops over time. A relationship need not involve the RFI in an actual transaction; giving advice may often constitute the establishment of a business relationship.
- VII.82 Many money service businesses carry out one-off transactions for customers that are outside of an ongoing business relationship. However, an RFI’s introduction of a customer loyalty programme, relationship management tool or linkages with other financial services, when coupled with an agreement between the RFI and the customer, indicate that a business relationship has been formed.
- VII.83 Where a business relationship has been formed, an RFI must apply full CDD measures to the relationship.
- VII.84 Where a one-off transaction is \$1,000 or less and is assessed as being low-risk for ML/TF, information based on a brief conversation with, or knowledge of, an individual customer may be sufficient. See paragraphs VII.108 through VII.112.
- VII.85 Where a one-off transaction or business relationship involves more than \$1,000 or is of a commercial nature, and particularly where the customer is a legal person or legal arrangement, formal CDD measures should be applied and recorded in accordance with these guidance notes.

Linked transactions

- VII.86 Linked transactions may be a series of transactions involving a customer, or they may be transactions that appear to be independent, but are in fact split into two or more transactions to avoid detection, CDD requirements, or questions about the source of the funds.
- VII.87 RFIs should have systems to identify and detect linked transactions, to apply enhanced due diligence to them, and to report any suspicious activity. These systems should identify a series of transactions from one customer to one or more recipients over a period of time, and they must identify a series of transactions from several customers to the same recipient over a period of time.
- VII.88 An RFI’s systems must be able to identify linked transactions that are conducted through any and all of the RFI’s branches or agents.

- VII.89 Transactions separated by a rolling interval of three months or more need not be treated as linked, provided there is no other evidence of a link and the transactions do not otherwise give rise to a business relationship.

Source of wealth and source of funds

- VII.90 Enquiries regarding the source of wealth and source of funds are among the most useful sources of information leading 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.
- VII.91 RFI's should make enquiries as to how a customer has acquired the wealth, whether in currency, securities or any other assets, to be used with regard to the money service business relationship or transaction.
- VII.92 The extent of such enquiries should be made using a risk-based approach. Where a proposed one-off transaction is small and is assessed as low-risk for ML/TF, or where the source of wealth or funds is readily apparent, such enquiries may be limited in accordance with the RFI's AML/ATF policies, procedures and controls.
- VII.93 RFI's should ensure that they understand the source of funds and specific means of payment, including the details of any account that a customer proposes to use.
- VII.94 More frequent and thorough source of wealth measures should be taken if the customer is a politically exposed person that presents a higher risk.
- VII.95 Additional information on source of funds and source of wealth is set forth in paragraphs 5.110 through 5.113.

Definition of customer in a money service business context

- VII.96 An RFI's customer is generally a private individual, legal person, trust or other legal arrangement with or for whom a business relationship is established, or with or for whom a one-off transaction is carried out. A given money service business relationship or transaction may have more than one person who is a customer.
- VII.97 A customer that is not a private individual generally involves a number of individuals, such as the directors, trustees, beneficial owners and other persons who directly or indirectly own or have the ability to control the customer. An RFI's customer is not only the customer itself, but also the individuals who comprise the customer entity and its relationship with the RFI.
- VII.98 Where a one-off transaction or business relationship involves multiple parties, such as when money is being transmitted with the involvement of one or more agents, any agent may also be a customer.
- VII.99 For the purposes of these guidance notes, a customer includes each of the following:

- Each private individual, legal person, trust or other legal arrangement that is or comprises a **customer** seeking a money service business product or service;
- Each **agent** involved in a business relationship or one-off transaction; and
- Each **beneficial owner** of a customer.

VII.100 Where an RFI has reason to believe that a customer is acting on behalf of another person, that other person is also a customer.

VII.101 Where a customer is an agent acting on behalf of a principal other than the RFI conducting CDD, the principal must also be subject to CDD, including identifying and verifying the principal as a customer, and identifying and taking reasonable measures to verify the persons who own and control the principal and its management.

VII.102 Additional information on the meaning of customer, business relationship and occasional transaction, and on identifying and verifying individuals, legal persons, trusts and other legal arrangements is set forth in Chapter 4: Standard Customer Due Diligence Measures.

Definition of beneficial owner in a money service business context

VII.103 RFIs must consider as beneficial owners those persons who own or control a customer or its management, directly or indirectly, including through any bearer or nominee arrangement.

VII.104 Information on the identification and verification of beneficial owners is set forth in Regulation 3 and Chapter 4: Standard Customer Due Diligence Measures.

Obtaining and verifying customer identification information

VII.105 RFIs must utilise a risk-based approach to determine the extent of identity information or evidence it requests and verifies. In making its determinations about the ML/TF risk associated with a transaction, an RFI should take into account factors such as:

- The nature of the product or service sought by the customer;
- The size of the transaction;
- The places where the transaction is initiated, continued and concluded;
- The nature of any other products or services to which the customer may migrate without further identity verification;
- The nature and length of any existing or previous relationship between the customer and the RFI;
- The nature and extent of any assurances from other RFIs that may be relied upon;
- The identity of the customer; and
- Whether the customer is physically present.

VII.106 A person who is a customer in the money service business context may be an individual, legal person, trust or other legal arrangement. For each type of customer, RFIs should follow the identification and verification requirements in Chapter 4: Standard Customer Due Diligence Measures, as supplemented by any relevant Annexes.

VII.107 Evidence of identity may be in documentary or electronic form. An appropriate record of the steps taken, and copies or records of the evidence obtained to identify the customer, must be kept as per the record-keeping portion of this guidance.

Standard identification requirements for private individuals

VII.108 Where a customer forms a business relationship with an RFI, the RFI must obtain and verify identification information for that person, at a minimum, using standard identification requirements.

VII.109 Where the customer has not formed a business relationship with the RFI and is instead engaging in a one-off transaction, the customer identification requirements may differ on the basis of the type of transaction, the size of the transaction, and whether the transaction is linked with other transactions.

VII.110 Where a one-off transaction is an occasional transaction, that is a transaction in amount of \$15,000 or more, or a wire transfer or money transmission in an amount greater than \$1,000, whether carried out in a single operation or several operations which appear to be linked, an RFI must apply, at a minimum, the standard CDD measures.

VII.111 An RFI fulfils the standard identification requirements by obtaining a private individual's:

- Full legal name, any former names (e.g. maiden name) and other names used;
- Principal residential address;
- Date of birth;
- Place of birth;
- Nationality;
- Gender; and
- Personal identification number or other unique identifier contained in a valid government-issued document.

VII.112 In addition, an RFI fulfils the standard identification for private individuals, by verifying the following using appropriate documentary or electronic means:

- Full legal name;
- Principal residential address; and
- Date of birth.

Simplified identification requirements for private individuals

VII.113 Any application of simplified identification requirements must be made only after conducting a risk assessment and arriving at a reasonable conclusion that the category of one-off transactions to which the simplified requirements are to be applied is low risk for ML/TF.

VII.114 Where an RFI carries out any wire transfer or other money transmission in an amount greater than \$1,000, the RFI must apply the standard CDD measures, as such a transaction is an occasional transaction.

- VII.115 The following money service business activities frequently do not involve a wire transfer or money transmission that would require standard CDD measures for one-off transactions in amounts ranging between \$1,000 and \$15,000:
- Cashing and guaranteeing cheques;
 - Issuing, selling or redeeming drafts, money orders or traveller's cheques for cash; and
 - Operating a bureau de change.
- VII.116 RFI should nonetheless determine whether any of the money service business activities listed in paragraph VII.110, whether alone or in combination with another product or service the RFI offers, do in fact involve a wire transfer or money transmission that would require the application of standard CDD measures.
- VII.117 Where an RFI conducting money service business has confirmed that a particular one-off transaction in an amount less than \$15,000 does not involve a wire transfer or money transmission, and that the transaction and customer are **low-risk** for ML/TF, the RFI is not automatically required to conduct CDD for the customer.
- VII.118 Nonetheless, RFI should obtain and verify the identity of customers for all money service business transactions unless the RFI has documented a probability that the application of standard CDD requirements will drive a class of legitimate customers to transact outside of the regulated financial sector, or will cause a class of legitimate customers to be unable to access the service in question by any means.
- VII.119 Bearing in mind the above, an RFI's AML/ATF risk assessment may inform the RFI's establishment of transactional thresholds, customer profiles, or other criteria to establish customer identification procedures under the RFI's AML/ATF policies, procedures and controls.

Obtaining and verifying beneficial owner information

- VII.120 RFI applying standard CDD requirements must obtain and verify identification information for the beneficial owners of any customer.
- VII.121 A beneficial owner is normally an individual who ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted.
- VII.122 In respect of customers who are private individuals, the customer himself is the beneficial owner, unless there are features of the transaction or surrounding circumstances that indicate otherwise.
- VII.123 Where there is reason to believe that a person is not acting on his own behalf, an RFI should make appropriate enquiries to identify and verify the customer and beneficial owner. Where a private individual is fronting for another private individual who is the beneficial owner, the RFI should obtain the same information about that beneficial owner as it would for a customer. For further guidance regarding a person acting under power of attorney or as an executor or personal representative, see paragraphs 4.45 to 4.47.
- VII.124 Where control or ownership is held by another legal person or legal arrangement, RFI should consider as a beneficial owner each private individual who ultimately controls or owns that other legal person or legal arrangement.

VII.125 Additional information on the identification and verification of beneficial owners, including beneficial owners of customers that are legal persons, trusts or other legal arrangements, is set forth in Regulation 3, Chapter 4: Standard Customer Due Diligence Measures, and Annex I: Sector-Specific Guidance Notes for Trust Business

Timing of customer due diligence

VII.126 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;
- Carries out any wire transfer or money transmission in an amount of \$1,000 or more (see Chapter 8: Wire Transfers);
- Suspects money laundering or terrorist financing;
- Doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification; or
- Has committed to doing so under the RFI's risk-based AML/ATF policies, procedures and controls, for example, when the RFI conducts a one-off transaction in an amount below \$15,000 that is not a wire transfer or money transmission.

VII.127 Where the product or service is a one-off transaction amounting to less than \$15,000 and the transaction does not involve a wire transfer or money transmission, the RFI should apply CDD measures at the time the one-off transaction is entered into. See paragraphs VII.105, VII.113 and VII.130.

VII.128 Where a customer who has carried out a one-off transaction amounting to less than \$15,000 requests a future or ongoing service, or returns to carry out further transactions, the RFI should consider whether the transactions are linked, or whether it is entering into a business relationship requiring CDD measures.

VII.129 Verification should take place:

- Before the RFI accepts a new customer;
- Before the RFI provides any service as part of a business relationship
- Before the RFI carries out any occasional transaction;
- Subsequently when there is any change in information previously provided, or when otherwise deemed necessary due to information obtained through risk assessment or ongoing monitoring.

VII.130 Detailed information on the timing of CDD measures is set forth in Chapter 3: Overview of Customer Due Diligence.

Customer transactions involving cash or bearer instruments

VII.131 Many RFIs conducting money service business handle cash or bearer instruments, which may easily be abused for criminal purposes. Due to the higher inherent risk of ML/TF where cash or

bearer instruments are involved, RFIs must ensure that the inherent risks are identified, evaluated and mitigated using appropriate AML/ATF measures.

- VII.132 While some transactions below \$15,000 may not automatically require the application of standard CDD, an RFI's AML/ATF risk assessment may determine that the use of cash or bearer instruments in such transactions, or the involvement of other higher risk factors requires the RFI to conduct CDD.
- VII.133 Paragraph 7.14 states that each RFI should establish norms for cash transactions and procedures for the identification of unusual cash transactions or proposed cash transactions.
- VII.134 Paragraphs 4.97 through 4.101 provide additional guidance on the use of bearer instruments.

Applicability of simplified due diligence to money service business

- VII.135 Simplified due diligence involves the application of reduced or simplified CDD measures in specified circumstances.
- VII.136 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.
- VII.137 Paragraphs VII.108 through VII.114 set forth that in the context of money service business, a one-off transaction in an amount lower than \$15,000 that does not involve a wire transfer or money transmission may be eligible for simplified CDD. However, paragraphs VII.129 through VII.130 clarify that an RFI's risk assessment may cause the RFI to conduct CDD on occasional transactions that involve cash, bearer instruments or other higher-risk criteria where those risks are not effectively mitigated through other means.
- VII.138 Where a transaction involves an entity for which simplified due diligence is appropriate, RFIs must nonetheless adhere to the guidance notes in identifying and verifying signatories and other persons connected with the customer.
- VII.139 Detailed information on the applicability of simplified due diligence is set forth in paragraphs 3.17 and 5.1 through 5.14.

Refusing or terminating money service business

- VII.140 If for any reason an RFI is unable to complete CDD measures in relation to a customer, Regulation 9 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 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 whether the RFI is required to make a Suspicious Activity Report to the Financial Intelligence Agency (FIA), in accordance with its obligations under POCA 1997 and ATFA 2004.

VII.41 Regardless of whether an RFI is an originating, intermediary, or beneficiary RFI of any wire transfer or money transmission, it must have effective risk-based policies and procedures for determining when to execute, reject, or suspend the wire transfer or money transmission and the capacity to timely effectuate any rejection or suspension.

VII.142 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.

Enhanced due diligence for money service business

VII.143 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.

VII.144 Regulation 11 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.

VII.145 In the context of money service business, the involvement of agents in the provision of an RFI's services may require an RFI to apply enhanced due diligence to its own agent network.

VII.146 In addition, the use of new payment methods in the context of money service business may require an RFI to apply enhanced due diligence. Risk factors common to many new payment methods include, but are not limited to:

- A lack of face-to-face interaction between the RFI, the customer and any third parties;
- Any possibility to transact anonymously;
- No limits, or high limits, on transactions;
- Cross-border transactions;
- Person-to-person transactions;
- Restrictions that preclude the transfer of information needed for effective CDD;
- An inability to monitor transactions within an NPM's system; and
- The use of service providers or agents that are not subject to effective AML/ATF regulation.

VII.147 Additional information on enhanced due diligence for new payment methods is set forth in paragraphs 5.37 through 5.96.

VII.148 Enhanced due diligence must be applied in each of the following circumstances:

- The agent, business relationship or one-off 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);
- The customer or beneficial owner has not been physically present for identification purposes (see paragraph 5.26 through 5.30); and
- The agent, business relationship or occasional transaction involves a politically exposed person (see paragraphs 5.97 through 5.117).

VII.149 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.

- VII.150 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 agent or customer, such as the persons that comprise, own and control the agent or customer, the nature of the agent or customer’s business, volume of assets and information available through public databases;
 - Additional information on the nature and purpose of the business relationship (see paragraphs 4.1 through 4.4);
 - Additional information on the source of wealth and source of funds of the customer (see paragraphs 5.110 through 5.113);
 - Additional information on the reasons for planned or completed transactions; and
 - Approval of the RFI’s senior management to commence or continue the agency relationship, customer business relationship, or one-off transaction (see paragraph 5.109).
- VII.151 In addition, RFIs should consider applying additional measures, such as:
- Updating more frequently the identification and verification data for the agent or customer, its beneficial owner(s), and any other persons with who own or may exercise control over the agent or customer; and
 - Conducting enhanced monitoring of the agent relationship or customer business relationship by increasing the number and frequency of controls applied and by identifying patterns of activity requiring further examination.
- VII.152 Additional mitigation measures are set forth in paragraphs VII.60, and 5.37 through 5.96.
- VII.153 Detailed information on enhanced due diligence is set forth in Chapter 5: Non-Standard Customer Due Diligence Measures.
- VII.154 Specific indicators of higher risk in money service business are discussed in greater detail in paragraphs VII.215 through VII.221 of this annex.

Agent networks and other third parties

- VII.155 Where an RFI’s money service business involves an agent network, or other third parties, RFIs should ensure that the agent or other third party has in place appropriate policies, procedures and controls to assess and mitigate the ML/TF risks associated with their involvement in the money service business.
- VII.156 RFIs should require agents and other third parties to demonstrate that they are examined for compliance with appropriate AML/ATF obligations.
- VII.157 An RFI may have a range of contractual relationships with agents or third parties. Some agents may be considered as an integral part of the RFI, and therefore directly subject to the RFI’s AML/ATF policies, procedures and controls. Other agents may be considered wholly separate entities upon which the RFI seeks to rely for purposes of AML/ATF. Still other agents may be most accurately considered customers entering into a business relationship with the RFI, for which appropriate CDD must be conducted. Each RFI must ensure that this range of possible

relationships does not prevent the effective implementation of appropriate AML/ATF controls at all levels of any agency structure or multiparty payment chain.

VII.158 RFI that provide services with the involvement of other parties must determine the distribution of AML/ATF responsibilities between the parties.

VII.159 Regardless of the type of relationship the RFI has entered into with the agent or other third party, the RFI should ensure that the following steps are taken with regard to each agent:

Prior to on-boarding the agent

- Require the agent to demonstrate that it is properly licensed, registered and supervised for compliance with appropriate AML/ATF obligations;
- Require the agent to provide the information set forth in paragraph VII.159, which the RFI must include in its agent list;
- Conduct a beneficial ownership assessment, including fit-and-proper testing and a review of negative media;
- Conduct a criminal background check of the agent's ownership, management and relevant employees; and
- Verify any required compliance credentials of relevant employees;
- Review the agent's AML/ATF policies, procedures and controls, and ensure that the distribution of AML/ATF responsibilities is in line with the requirements of these guidance notes.

After on-boarding the agent

- Train the agent on the RFI's AML/ATF policies, procedures and controls;
- Conduct ongoing monitoring of transactions and business relationships involving the agent;
- Conduct ongoing monitoring and testing of the agent's compliance with the relevant AML/ATF policies, procedures and controls;
- Consider whether on-site visits and/or testing is merited;
- Take prompt corrective action as needed, including filing STRs about the agent where appropriate; and
- Terminate the relationship where appropriate.

VII.160 Where an RFI relies upon an agent, the agent is an extension of the RFI. Similarly, where the RFI providing the product or service has a direct sales force, that sales force is considered to be part of the RFI, whether or not it operates under a separate group legal entity. In such cases, the RFI retains full responsibility for implementing group-wide AML/ATF policies, procedures and controls. While the RFI's agent may obtain and verify CDD evidence, it is the responsibility of the RFI itself to advise and train the agent, and to conduct ongoing monitoring of the agent and its transactions.

VII.161 Where, however, a third party is not an agent, but is instead a person or institution with its own AML/ATF policies, procedures and controls upon which the RFI wishes to rely for AML/ATF purposes, such reliance is permissible only in specified circumstances.

VII.162 Paragraphs 5.118 through 5.148 set forth the circumstances in which reliance on a third party is permissible. Paragraphs 3.22 through 3.24 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.

- VII.163 RFI's conducting money service business should ensure that each natural or legal person working for the RFI as an agent is licensed or registered by a competent authority that operates, and supervises for compliance with, an appropriate AML/ATF regulatory regime.
- VII.164 Where an RFI's agent is not licensed or registered, or cannot be licensed or registered with a competent authority, the RFI should maintain a current list of its agents and make that list available to the Authority upon request. Such an agent list should include, at a minimum:
- The agent's name, including any trade name(s);
 - The agent's business and (if different) mailing address;
 - The agent's telephone number;
 - The types of services the agent provides on behalf of the RFI;
 - The agent's monthly gross transaction amount for the previous twelve months;
 - The year the RFI accepted the agent as such;
 - The name and address of any bank at which the agent maintains an account used in the agent's money service business on behalf of the RFI; and
 - The number, if any, of branches or sub-agents the agent has.

Money transmission and wire transfers

- VII.165 In the context of money service business, any money transmission is a wire transfer and subject to the rules for wire transfers set forth in Regulations 21 through 31, the Bermuda Monetary Authority Guidance for Wire Transfers 2010 and Chapter 8: Wire Transfers. The objective of the regulations and guidance is to increase the transparency of all transfers of funds, both cross-border and domestic, by requiring RFI's to include essential information with each transfer.
- VII.166 RFI's conducting wire transfers or money transmissions should ensure that the identity of the payee is accurate and verified for any cross-border transfer of funds over \$1,000, and for any cross-border transaction that is carried out in several operations that appear to be linked and together exceed \$1,000.
- VII.167 Where the payee has a business relationship with the payee RFI, the payee's identity is accurate and verified if the information has been satisfactorily obtained and verified in accordance with the Regulations and these Guidance Notes. However, a number of factors may cause an RFI to conduct additional customer due diligence on a customer prior to disbursing any funds from the transfer. These factors include but are not limited to the RFI's risk tolerance and risk assessments, the involvement of any agent or third party service provider, the involvement of higher-risk persons or jurisdictions, and the particular nature of the transfer that has been received in the context of the accountholder's previous transactions and conduct.
- VII.168 Where the payer does not have a business relationship with the RFI and the wire transfer or money transmission exceeds \$1,000, the payer RFI must satisfactorily obtain and verify the identity and address of the payer prior to executing the transaction. Where the address is substituted with a payer's date and place of birth, customer identification number or national identity number, that information must also be verified. In addition, the RFI must verify the

complete information where a transaction is carried out in several operations that appear to be linked and together exceed \$1,000.

- VII.169 Where the payer does not have a business relationship with the RFI and the wire transfer or money transmission is \$1,000 or less, the payer RFI should obtain information establishing the payer's identity and address. Where the address is substituted with a payer's date and place of birth, customer identification number or national identity number, that customer information should be obtained. RFIs are not required to verify the information obtained for such transactions; nonetheless, it is advisable to do so in all cases. Where a transaction is carried out in several operations that appear to be linked and together exceed \$1,000, the verification requirements described in paragraph VII.163 apply.
- VII.170 Additional information concerning wire transfers and money transmission is set forth in Chapter 8: Wire Transfers

International sanctions

- VII.171 RFIs conducting money service business should implement a sanctions compliance programme in line with the guidance set forth in Chapter 6: International Sanctions.
- VII.172 RFIs should determine whether any persons connected with a customer, and the individuals behind any such persons that are legal entities, trusts or other legal arrangements, are sanctions targets.
- VII.173 RFIs must be aware that, in contrast to AML/ATF measures, which permit RFIs 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 licence.
- VII.174 Additional information concerning international sanctions is set forth in Chapter 6: International Sanctions

Ongoing monitoring

- VII.175 Regulations 6(3), 7, 11(4)(c), 13(4), 16 and 18 require RFIs to conduct ongoing monitoring of a business relationship with a customer, and of transactions for which the RFI conducts CDD.
- VII.176 Ongoing monitoring in the context of money service business supports several objectives:
- Maintaining a proper understanding of a customer's identity and activities;
 - Ensuring that CDD documents and other records are accurate and up-to-date;
 - Providing accurate inputs for the RFI's ongoing risk assessment processes;
 - Testing the outcomes of the RFI's ongoing risk assessment processes;
 - Detecting and scrutinising unusual or suspicious conduct in relation to a customer; and

- Evaluating the compliance of agents with the RFI's AML/ATF policies, procedures and controls.
- VII.177 Failure to adequately monitor transactions or business relationships, for example by failing to put in place effective systems to identify linked transactions, 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.
- VII.178 RFIs should determine the scope and frequency of ongoing monitoring using a risk-based approach. RFIs should direct greater monitoring resources toward those products, services and business relationships presenting a higher risk of money laundering or terrorist financing than to those presenting a lower risk.
- VII.179 RFIs must be able to demonstrate to their supervisory authority that the extent of their CDD measures and ongoing monitoring is appropriate in view of the risks of money laundering and terrorist financing.
- VII.180 With respect to the customer, RFIs should consider:
- The nature, amount and frequency of the transactions;
 - Geographic connections (see paragraph 2.48);
 - Whether the customer is known to use other products and services;
 - Whether the customer can be categorised according to activity or turnover;
 - Whether the customer's conduct falls outside any norms established for any categories identified; and
 - Whether the customer presents a higher than standard risk for money laundering or terrorist financing.
- VII.181 Ongoing monitoring includes:
- Scrutinising one-off transactions and business relationships to ensure that the transactions and business conduct are consistent with the RFI's knowledge of the customer and his risk profile, the product or service and its risk profile, and the RFI's risk-based policies, procedures and controls;
 - Investigating the background and purpose of all linked, 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 up-to-date, adequate and relevant for the purpose of applying CDD measures.
- VII.181 Ongoing monitoring must be carried out on a risk-sensitive basis. Higher-risk customers and business relationships, including those involving agents, must be subjected to enhanced due diligence and more frequent and/or intensive ongoing monitoring.
- VII.183 Bearing in mind that some criminal activity may be so widespread as to appear to be the norm, RFIs should establish norms for lawful one-off transactions and conduct in relation to money service business customers, including norms for activities involving cash or bearer instruments. See paragraphs 7.11 through 7.14.

- VII.184 Once an RFI has established norms for lawful one-off transactions and conduct, it must monitor any business relationship, transactions, patterns of transactions and conduct by customers and the persons who own and control those customers to identify transactions and conduct falling outside of the norm.
- VII.185 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:
- Customers, 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 money laundering or terrorist financing occurring without detection.
- VII.186 An RFI should calibrate its monitoring systems to identify for review all higher-risk activity, including, but not limited to:
- Transactions or conduct falling outside of the expected norm for a customer, product or service;
 - All complex or unusually large transactions and unusual patterns of transactions which have no apparent economic or lawful purpose;
 - Transactions for which the customer has not been physically present for identification purposes (see paragraph 5.26 through 5.30);
 - Business involving a correspondent banking relationship (see paragraph 5.148);
 - A business relationship or occasional transaction involving a politically exposed person (see paragraphs 5.97 through 5.117);
 - A business relationship or occasional transaction that 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 paragraph 5.19);
 - Transactions that may favour anonymity, including new payment methods (see paragraphs 5.37 through 5.96); and
 - Transactions with regard to which an agent of the RFI has not followed the requisite AML/ATF policies, procedures and controls.
- VII.187 Where an RFI accepts higher-risk business, it must ensure that it has the capacity and expertise to effectively conduct ongoing monitoring of the customer, the products and services being offered, and any business relationships the RFI forms, including those involving agents. See paragraph VII.50.
- VII.188 Additional information on ongoing monitoring is set forth in Chapter 7: Ongoing Monitoring.

Suspicious activity reporting

- VII.189 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.
- VII.190 RFIs conducting money service 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.

- VII.191 The definitions of knowledge, suspicion and reasonable grounds to know or suspect are set forth in paragraphs 9.6 through 9.10.
- VII.192 Many customers will, for perfectly good reasons, have an erratic pattern of transactions or 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.
- VII.193 Enquiries into unusual transactions should be in the form of additional CDD measures to ensure an adequate, gap-free understanding of the transaction and/or relationship, including the purpose and nature of the transaction and/or conduct in question and the identity of the persons who initiate or benefit from the transaction and/or conduct.
- VII.194 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.
- VII.195 In many circumstances, for purposes of reporting ML/TF suspicion, an agent will be an RFI's employee, and therefore must report to the RFI's Reporting Officer. In addition, where an RFI has a suspicion concerning one of its agents, the RFI must also report such suspicions to the Reporting Officer.
- VII.196 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.
- VII.197 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.
- VII.198 As of October 2011, the Financial Intelligence Agency no longer accepts any manually submitted suspicious activity reports (including those faxed or emailed). The Financial Intelligence Agency accepts only those suspicious activity reports that are submitted electronically via the goAML system, which is available at www.fia.bm.
- VII.199 Where a Reporting Officer considers that an external report should be made urgently, initial notification to the Financial Intelligence Agency may be made by telephone, but must be followed up by a full suspicious activity report as soon as is reasonably practicable.
- VII.200 The Financial Intelligence Agency 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

- VII.201 Where an employee, including in many circumstances, an agent, fails to comply with the obligations under Section 4 of POCA 1997 or of ATFA 2004 to make disclosures to a Reporting Officer and/or to the Financial Intelligence Agency as soon as is reasonably practicable after information giving rise to knowledge or suspicion comes to the attention of the employee, the employee or agent is liable to criminal prosecution.
- VII.202 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 in indictment, a fine up to an unlimited amount, or both.
- VII.203 Section 47 of POCA 1997 and Section 10 of ATFA 2004 contain tipping-off offences.
- VII.204 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 Financial Intelligence Agency 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.
- VII.205 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.
- VII.206 Any approach to the customer or to an introducing intermediary should be made with due regard to the risk of committing a tipping-off offense. See paragraphs 9.83 through 9.84.
- VII.207 Detailed information on suspicious activity reporting, including related offenses and constructive trusts is set forth in Chapter 9: Suspicious Activity Reporting.

Employee and agent training and awareness

- VII.208 The responsibilities of RFIs to ensure appropriate employee training and awareness are governed primarily by Regulations 16 and 18.
- VII.209 In many circumstances, an RFI conducting money service business will have one or more agents who, for AML/ATF purposes, are considered employees of the RFI and must be trained as such.
- VII.210 RFIs must take appropriate measures to ensure that relevant employees and agents:
- 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.
- VII.211 Each RFI must also ensure that relevant employees and agents receive appropriate training on its

AML/ATF policies and procedures relating to:

- Customer due diligence measures;
- Ongoing monitoring;
- Record-keeping;
- Internal controls; and
- Risk assessment and management.

- VII.212 Where an employee, including in many circumstances, an agent exercises discretion for or in relation to a customer, the RFI must ensure that the employee or agent as the case may be has an appropriate level of knowledge and experience to exercise the discretion properly, in accordance with the duties and obligations arising under the Acts and Regulations.
- VII.213 Detailed information on employee training and awareness is set forth in Chapter 10: Employee Training and Awareness.

Record-keeping

- VII.214 The record-keeping obligations of RFIs are governed primarily by Regulations 15 and 16.
- VII.215 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 linked transactions, is completed.
- VII.216 Where an RFI conducting money service business engages in transactions that are eligible for simplified CDD, the RFI must keep records of any CDD performed. Where the RFI has determined on the basis of the Acts and Regulations and its AML/ATF risk assessment that no CDD is required for a particular transaction, the RFI must nonetheless keep records of the transaction itself.
- VII.217 Detailed information on the records that must be kept is set forth in Chapter 11: Record-Keeping.

Money service businesses as customers of other RFIs

- VII.218 Many money service businesses are reliant upon access to the regulated financial sector in order to commence or continue their operations. Some financial institutions, perceiving money service businesses to be high-risk for ML/TF for the reasons set forth in paragraph VII.53, have categorically terminated business relationships with money service businesses, and refused to accept money service businesses as new customers. Such a systematic rejection of money service businesses as customers risks driving classes of legitimate customers to transact outside of the regulated financial sector, or may cause classes of legitimate customers to be unable to access the service in question through any means.
- VII.219 In order to become or remain a customer of another RFI, a money service business may be asked by the other RFI to provide detailed information concerning one or more of the following:

- Whether the business is properly licensed, registered and regulated;
- Whether the business is a principal in its own right, or an agent of another principal;
- Length of time the business has operated;
- Identity, experience and reputation of the business's beneficial owners and managers;
- The business's formal AML/ATF policy statement (see paragraphs 1.29 through 1.35)
- The business's AML/ATF policies, procedures and controls, including group-wide compliance programmes;
- Names and contact information for the business's Compliance Officer and Reporting Officer (see paragraphs 1.36 through 1.49);
- The business's internal and/or independent audits of the functioning of its AML/ATF policies, procedures and controls (see paragraphs 1.75 through 1.79);
- The business's policies, procedures and controls for screening, on-boarding, training and overseeing agents and employees;
- The business's agent list;
- The business's client profile;
- The business's products and services profile;
- Purpose of the proposed account and the type and level of anticipated account activity; and
- The business's assessment of the ML/TF risks it faces, and the mitigating measures it has put in place.

Risk factors for money service business

VII.220 In addition to the non-exhaustive list of risk factors set forth in above and in paragraph 2.35, RFIs conducting money service business should consider sector-specific risk factors, including those in paragraphs VII.216 through VII.221 below, in order to fully assess the ML/TF risks associated with a particular business relationship. The non-exhaustive list of sector-specific risk factors addresses customers, products, services, transactions, delivery channels, agents and other third parties and geographic connections.

VII.221 Customer risk factors include, but are not limited to:

- A customer who offers false, fraudulent, or fictitious identification information or documents;
- Unjustified delays in the production of identity documents or other requested information;
- A non-face-to-face customer, where doubt exists about the identity of the customer;
- A customer who knows little or is reluctant to disclose basic details about the payee;
- A customer who has only vague knowledge about the amount of money involved in the transaction;
- A customer who gives inconsistent information;
- A customer transacting with a jurisdiction with which the customer has no apparent ties;
- A customer who appears to be acting on behalf of a third party but does not disclose that information;
- One or more persons other than the customer watching over the customer or waiting just outside of the RFI;
- A customer reading from a note or mobile phone while providing details of the transaction;
- A customer traveling unexplained distances to different locations of the RFI and/or its agents to conduct transactions;
- A customer who owns or operates a cash-based business;

- The involvement of any politically exposed person as a person owning, controlling or representing the customer, or as a person otherwise connected with the customer;
- A customer who is known to the RFI to have been the subject of law enforcement sanctions in relation to crime generating proceeds;
- A customer who begins a transaction, but cancels the transaction after learning of a CDD requirement;
- A customer who threatens or tries to convince the RFI's personnel to avoid reporting;
- A customer who is a member of a class of persons considered higher risk for ML/TF;
- The unnecessary granting of a power of attorney;
- A customer 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;
- A customer offering to pay extraordinary fees for unusual services, or for services that would not ordinarily warrant such a premium;
- Requests for payment to be made via the RFI's client money account, where such a payment would normally be made from a customer's own account;
- Requests for anonymity that go beyond a reasonable request for discretion;
- A customer or counterpart who is another money service business or financial institution which has been sanctioned by a respective national competent authority for non-compliance with applicable AML/ATF regulations and who is not engaging in remediation to improve its compliance;
- A customer who uses agents or associates such that it is difficult for the RFI to identify the beneficial owner of the funds; and
- A transaction or business relationship that uses complex networks of legal arrangements where there is no apparent rationale for the complexity, or where the complexity appears to be intended to conceal the true ownership or control arrangements from the RFI.

VII.222 Products and services risk factors include, but are not limited to:

- Products or services that may inherently favour anonymity;
- Products that can readily cross international borders, such as cash, online money transfers, stored value cards, money orders and international money transfers by mobile phone;
- Products or services that have a very high or no transaction limit; and
- Products or services that permit the exchange of cash for a negotiable instrument, such as a stored value card or a money order.

VII.223 Transaction risk factors include, but are not limited to:

- Transactions that are just below the RFI's thresholds for due diligence checks;
- Transactions that appear to have no obvious economic or financial basis;
- Unusual, complex or uncharacteristically large transactions;
- Transactions that route through third countries or third parties;
- Transactions accompanied by information that appears false or contradictory;
- A wire transfer or money transmission that is not accompanied by all required information;
- A transaction to a country or region that is outside of the RFI's normal business;
- Cashing third-party cheques endorsed to the customer;
- Cashing checks from financial institutions in jurisdictions that pose a higher risk for ML/TF or from countries identified as having weak anti-money laundering controls;

- Large cash or bearer instrument transactions in circumstances where such a transaction would normally be made by cheque, banker's draft or wire transfer;
- Transfers to the same person from different individuals or to different persons from the same individual with no reasonable explanation;
- Transfers of funds that are not in line with the stated business activities of the customer;
- Customers requesting transfers to or from overseas locations with instructions for payment to be made in cash;
- Transactions from another money service business that is not acting as the RFI's agent;
- 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 transaction or business relationship;
- One-off transactions giving rise to suspicion; and
- Requests for funds, shares or other assets to be transferred to PEPs or higher-risk charities or other not-for-profit organisations not subject to effective supervision and monitoring.

VII.224 Delivery channel risk factors include, but are not limited to:

- A lack of face-to-face contact with the customer and any persons associated with them;
- 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.

VII.225 Agent and other third party risk factors include, but are not limited to:

- Agents for which the RFI is unable to satisfactorily complete the steps set forth in paragraph VII.154;
- Agents that refuse to provide information requested for inclusion in the RFI's agent list;
- Agents representing more than one RFI;
- An agent that has its own agents for which it provides inadequate supervision;
- Agents located in a higher-risk jurisdiction or serving higher-risk customers or transactions;
- Agents that are, or involve, politically exposed persons;
- Agents conducting an unusually high number of transactions with another agent location, particularly with an agent in a high risk geographic area or corridor;
- Agents that have transaction volume that is inconsistent with either overall transaction volume or relative to typical past transaction volume;
- Agents that have been the subject of negative attention from credible media or law enforcement sanctions;
- Agents that have failed to attend or satisfactorily complete the RFI's training programs;
- Agents that do not effectively manage compliance with the RFI's AML/ATF policies, procedures and controls;
- Agents that fail to provide required originator information upon request;
- Agents that conduct inconsistent or substandard data collection or record keeping;
- Agents willing to accept false identification or identification records that contain false information, non-existent addresses that would be known to be non-existent to a person in that area, or phone numbers that are used as fillers;
- Agents with a send-to-receive ratio that is not balanced, as compared with other agents in the locale, or that engage in transactions or activities indicative of complicity in criminal activity;
- Agents whose ratio of questionable or anomalous customers to customers who are not questionable or anomalous is out of balance with the norm for comparable locations;

- Agents who move money through RFI accounts in amounts not corresponding with the agent's money service business on behalf of the RFI;
- Agents that are new businesses without an established operating history; and
- An agent that fails the RFI's transaction testing for compliance with the RFI's AML/ATF policies, procedures and controls.

VII.226 Geographic risk factors include, but are not limited to:

- A customer entity established with funds originating from banks in high-risk jurisdictions;
- A customer, person acting on behalf of the customer, person owning or controlling the customer or any agent or other third party associated with the customer who is a resident in, or citizen of, a high-risk jurisdiction;
- A money service business transaction to, through, or from a high-risk jurisdiction;
- A non-face-to-face transaction initiated from a high-risk jurisdiction;
- A money service business transaction linked to business in or through a high-risk jurisdiction;
- Money service business involving persons or transactions with a material connection to a jurisdiction, entity, person, or activity that is a target of an applicable international sanction;
- A money service business relationship or transaction for which an RFI's ability to conduct full CDD may be impeded by another jurisdiction's confidentiality, secrecy, privacy or data protection restrictions.
