



BERMUDA MONETARY AUTHORITY

LEGAL SERVICES & ENFORCEMENT DEPARTMENT

GUIDANCE NOTES

AML/ATF SECTOR SPECIFIC GUIDANCE NOTES FOR TRUST BUSINESS ON THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM

Pursuant to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (Section 5(2) Section 49A of the Proceeds of Crime Act 1997 and Section 12B of the Anti-Terrorism (Financial and Other Measures) Act 2004

It should also be noted that under section 49M of the Proceeds of Crime Act 1997 and Section 20 sub-section 6 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 compliance with the Guidance Notes will be taken into consideration when considering failure to comply with the Regulations

(This sectoral guidance should be read in conjunction with the general Guidance Notes for AML/ATF Regulated Financial Institutions issued by the Bermuda Monetary Authority)

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1 TRUST COMPANY BUSINESS

All persons carrying on trust business within the meaning of section 9(3) of the Trusts (Regulation of Trust Business) Act 2001 (“licensed undertakings”) are designated as Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) regulated financial institutions for the purposes of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the “Regulations”). Licensed undertakings must therefore comply with all mandatory provisions of the Regulations and in addition should follow the general Guidance Notes on Anti-Money Laundering and Anti-Terrorist Financing issued by the Bermuda Monetary Authority in October 2010 (the “General Guidance”).

1.1 Overview

This sector-specific Guidance Note is intended to provide additional guidance with respect to certain areas of AML/ATF compliance, specific to trust business. N.B. This Guidance Note does not substitute the Regulations and the General Guidance.

2 RISK-BASED ASSESSMENTS FOR LICENSED UNDERTAKINGS

2.1 Taking a Risk-Based Approach

Chapter 4 of the General Guidance entitled “The Risk-based Approach” states that financial institutions must take a risk-based approach to combat money laundering and terrorist financing.

By adopting a risk-based approach, it is possible to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified, allowing resources to be allocated efficiently. The principle is that resources should be directed in accordance with priorities so that the greatest money laundering risks receive the highest attention. Higher risk areas should be subject to enhanced procedures; this would include measures such as enhanced customer due diligence checks¹ and enhanced transaction monitoring. It also follows that in instances where risks are low, reduced controls may be applied.

It is important that a trust customer’s risk profile is established based on the trust’s individual circumstances in accordance with the licensed undertaking’s risk assessment. Where the trust client risk profile or activities warrant a higher risk profile this should be monitored and updated regularly to ensure that unusual transactions can be identified.

2.2 AML/ATF Risks in the Provision of Trustee Services

Normally, the level of diligence carried out for trustee services will be higher than that needed for normal retail banking. A trust client’s needs will often involve the use of complex products and fiduciary services, sometimes involving more than one jurisdiction. Where complex legal vehicles and structures are used, it is important to establish that their purpose and use is genuine and to be able to follow any chain of title to determine who the beneficial owner(s) are.

¹ Customer due diligence (CDD) is defined under Regulation 5 in the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and involves identification and verification steps (see general GN Sect. 5.5 and 5.24).

Chapter 4 of the general Guidance Notes identifies four major risk categories relating to money laundering or terrorist financing risks: (a) customer risk; (b) product/service risk; (c) delivery channel risk; and (d) country/geographic risk.

In addition to the general risks addressed in Chapter 4, a licensed undertaking that carries on trust business may wish to consider some, or all, of the following factors in order to properly assess a trust client's risk.

It should be noted that these risk factors do not necessarily mean you should not accept the business, only that they are issues to be taken into consideration when rating the risks of the relationship and then determining whether or not to accept it:

2.2.1 Customer Risk

Where the proposed trust structure would make it difficult to identify and verify the true owner or controlling interests, such as the:

1. Unexplained use of corporate structures, express trusts and nominee shares, and use of bearer shares.
2. The appointment of parties as co-trustees with little or no commercial involvement.
3. Use of a dummy settlor who, on behalf of the instigator or actual settlor, agrees to settle property into the trust for the purpose of concealing the identity of the actual settlor.
4. 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 trust companies should ask for a rationale.
5. Unexplained relationship between a trust's settlor, beneficial owners, controllers, co-trustees and third parties. The licensed undertaking should be wary of requests to add settlors, beneficiaries, protectors or third parties who are not exercising a delegated function for the trustee and who have no reserved power under the trust.
6. Where there is no readily apparent connection or relationship between the settlor and the beneficiaries. Since the economic nature of a trust is a mechanism for the settlor to benefit a beneficiary, licensed undertakings should endeavour so far as possible to ascertain the settlor's reasons for wanting to benefit a beneficiary with whom he/she seemingly has no connection.

This should also include situations such as:

7. Requests for large payments for unspecified services to consultants, related parties or employees etc.
8. Unusual transactions (including purchase/sale transactions significantly above/below market price).
9. Long unexplained delays over the production of underlying company accounts.

10. Where the licensed undertaking has been requested to add a third party as a new beneficiary to the trust.
11. Where the licensed undertaking has received a letter of wishes requesting that a third party be added as a beneficiary to the trust after the death of the settlor or after a certain period of time has passed or after the happening of a certain event.
12. Total changes of beneficiaries: Where all of the existing beneficiaries are removed and different beneficiaries are added, or where this is intended. There may be perfectly legitimate reasons for this occurring, e.g. beneficiaries may be excluded because of tax inefficiency or if they become a U.S. person. However where there is no reasonable explanation, the licensed undertaking should endeavour to ascertain the reasons for these changes.
13. Situations where it is difficult to identify the beneficiaries of trusts. This might include situations where identification is hindered because the beneficiary of a trust is another trust or corporate vehicle.
14. The previous four points could, for example, indicate that a settlor is withholding information on persons really intended to benefit from a discretionary trust, e.g. use of a blind trust arrangement to make distributions to individuals who are not named.
15. Opaque or complex legal entities and arrangements where the customer is not open about the purpose of a legal person or legal arrangement. For example, there may be a network of companies owned by the trust without there being any good rationale for such a complex structure to be in place.
16. Settlers or beneficiaries who are politically exposed persons (PEPs).
17. Settlers or beneficiaries who are high risk charities and other “not-for-profit” organisations which are not subject to monitoring or supervision, especially those operating on a “cross-border” basis. (See guidance on charities or not-for-profit organisations which can be considered as high risk.)
18. Trust assets that are derived from cash-intensive businesses.
19. Whether a settlor’s wealth was derived from, or connected to, such businesses as gambling, armaments or money service business. Such businesses should be considered for treatment as high risk.
20. The level of regulation or other oversight to which a customer is subject. A settlor or beneficiary which is a regulated entity in another jurisdiction may be regarded as lower risk.

2.2.2 Product/Service Risk

1. 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 disclosed purpose of the structure is not genuine.

2. Commercial, private, or real property transactions or services within the operation of a Trust with no apparent legitimate business, economic, tax, family governance, or legal reasons.
3. Retention of dispositive powers - Any request for an unusual amount of control over the movement of trust assets, for example, a third party, other than the licensed undertaking, being able transfer or dispose of property out of the structure without involving the licensed undertaking. Another example is when the settlor and beneficiary appear to be different parties on the face of the deed, but through the use of a company or another trust, they are actually the same individual and excessive powers are reserved or delegated to one of these parties.
4. Settlers making unusual or unanticipated requests to have the trust administered or assets transacted in unusual circumstances or with undue complexity.
5. Unexplained urgency – Licensed undertakings are encouraged to enquire as to the reasons for any urgency, especially where the settlor is indicating that some of the due diligence process can or will be completed after the trust has been established or a transaction has been entered into by the trustees or an underlying company owned by the trust.
6. Culture of confidentiality – Trust clients often seek reassurance that their need for confidential business will be conducted discreetly. While the need for anonymity or confidentiality should not automatically be inferred as illegitimate, any unexplained requests for anonymity may be an indicator of higher risk.
7. The source of funds and the source of wealth – Any situation where there has been a failure to be open about, or where there has been difficulty verifying, the source of wealth and/or the source of funds may be an indicator of higher risk. For clients where the wealth has been inherited through generations or through companies that no longer exist and for which tax filings are no longer required to be maintained verification for source of wealth (SOW) can be difficult. In these cases the unexplained difficulties, not the difficulty itself could be a red flag.
8. Unusually high levels of assets or unusually large transactions compared to what might reasonably be expected of customers with a similar profile may indicate that a customer not otherwise seen as higher risk should be treated as such. Conversely, low levels of assets or low value transactions involving a customer that would otherwise appear to be higher risk might allow for a licensed undertaking to treat the trust client as lower risk.
9. The offer by customers to pay extraordinary fees for services which would not ordinarily warrant such a premium.
10. Requests/distributions to be made to PEPs, high risk charities or other “not-for-profit” organisations which are not subject to monitoring or supervision (especially those operating on a “cross-border” basis and persons or entities resident in countries which may present a geographic risk (see reference to Country/Geographic risk below) should be considered for treatment as higher risk. In such cases it will be necessary to conduct enhanced due diligence ahead of any distributions.

Some examples of high risk charities may be:

11. In instances where the charity has been the subject of allegations of links to criminal and/or terrorist activities, the source and strength of the allegations should be considered as it may be necessary to file a suspicious activity report.
12. Charities named on sanctions lists that are issued by Competent Authorities in any jurisdiction.
13. Charities involved in cross-border activity – Consideration should be given to the jurisdiction(s) in which funds are raised and where they are distributed, and where a significant proportion of the funds are raised in a high risk jurisdiction.

Where a relationship is maintained with a highly reputable international charity it will not be necessary to classify the beneficiary/trust as high risk.

2.2.3 Delivery Channel Risk

1. Non face-to-face relationships with parties to the trust.
2. The regularity or duration of the relationship – Long-standing relationships involving frequent customer contact throughout the relationship may present less risk from the money laundering perspective.

2.2.4 Country/Geographic Risk

1. Settlers, beneficiaries or potential customers based in or conducting business in or through countries where corruption is known, or perceived, to be a common source of wealth may represent a greater risk.
 - a. Licensed undertakings should have regard to the Transparency International's Corruption Perceptions Index (www.transparency.org/) as well as other appropriate publications/databases, when considering the relevant political and economic environment.
2. Conducting business in or through countries with statutory banking secrecy – If the settlor wishes to contribute assets originating from or residing in these countries it may present licensed undertakings with difficulty in verifying the source of funds. Where this is the case, the licensed undertaking should consider having the settlor waive any rights to banking secrecy and provide the information that is required to fulfil verification on the source of funding.
3. Settlers, beneficiaries or potential customers based in or conducting business in or through countries known to have deficiencies in the AML/ATF supervisory regimes will increase the risk. (See <http://www.fatf-gafi.org/> for a list of higher risk countries).
4. Settlers, beneficiaries or potential customers based in or conducting business in or through countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (UN).
 - a. In addition, in some circumstances, countries subject to sanctions or measures similar to those issued by bodies such as the UN, but which may not be universally recognised, may be given credence because of the standing of the issuer and the nature of the measures.

5. Settlers, beneficiaries or potential customers based in or conducting business in or through countries identified by credible sources² as providing funding or support for terrorist activities that have designated terrorist organisations operating within them.

3 ESTABLISHING IDENTITY: TRUST CUSTOMER IDENTIFICATION & VERIFICATION

3.1 OVERVIEW

A licensed undertaking must ensure that adequate customer due diligence (CDD) procedures are in place. Regulation 5 defines CDD and Chapter 5 of the General Guidance expands on CDD requirements. In broad terms CDD can be divided into three elements: firstly, the identification of customers and beneficial owners, secondly, the verification of identity and, thirdly, obtaining information on the purpose and intended nature of the business relationship.

3.2 Scope of Customer Due Diligence

3.2.1 Defining “Customer” in a trust business context

While the term customer is not defined in the Regulations, the General Guidance identifies a customer as a party or parties with whom there exists a business relationship as defined in Regulation 2(1). In the case of a trust this would include the persons who are concerned with the trust at the time that the trust is settled; at the time any additional assets are contributed to the trust or assets are distributed out of the trust; or at the time a licensed undertaking becomes an additional or replacement trustee of an existing trust.

Whenever assets are settled into a trust, either initially or later, any settlor should always be identified as a customer and be subject to CDD measures. Additionally, any “effective” settlor, whether or not an actual settlor, should be regarded as a customer by the licensed undertaking.

Depending on the nature and circumstances of a relationship with the licensed undertaking and the terms of the trust, protectors, enforcers, co-trustees, beneficiaries and other third party “controllers” may also be regarded as having a business relationship with the licensed undertaking and as a result be subject to CDD measures. Note that such parties may also be subject to CDD through meeting the definition of beneficial owner below.

3.2.2 Definition of beneficial owner

Regulation 3(3) defines the beneficial owner in the case of a trust as:

1. Any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;
2. 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; or

² Here “credible sources” refers to advisories issued by internationally or nationally recognised bodies such as the Financial Action Task Force (FATF), HM Treasury and/or reflected in domestic advisories issued by the National Anti-Money Laundering Committee (NAMLC). See also the general Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-Money Laundering & Anti-Terrorist Financing Sections 5.304-5.312.

3. Any individual who has control over the trust.³

3.2.2.1 Individual with a specified interest

A person has a specified interest if they have a vested interest of the requisite level in possession or remainder or reversion, defeasible or indefeasible.

3.2.3 Class of persons to benefit

Part 2 of the definition in 3.2.3 above covers any trust that includes persons who do not fit within Part 1. Within Part 2, you must identify the class of persons in whose main interest the trust operates. The beneficiaries or objects of discretionary trusts will fall within Part 2.

Note: If a trust has one or more persons who are individuals with a 25% specified interest, as well as other beneficiaries, you should identify the individuals who fit within the first part of the definition, then consider the rest of the beneficiaries as a class under Part 2.

Identification of a class is by description, such as:

1. The children and remoter issue of X
2. The grandchildren of X
3. Charity Y
4. The employees of company X
5. Pension holders and their dependents
6. Unitholders

When considering in whose main interest a trust is set up or operates, there may be several classes of beneficiary. The licensed undertaking should consider which class (or part of a class) is most likely to receive most of the trust property in the foreseeable future.

For example:

1. Where a trust is for the children of X, then there is only one class on which the licensed undertaking must conduct CDD. The licensed undertaking must conduct full due diligence on the settlor, identify the children of X, and ensure that full due diligence has been conducted on the children of X, prior to making a distribution.
2. Where a trust may benefit the children of X, and then after their deaths, the grandchildren of X, and after their deaths, charity Y, then the class most likely to benefit from a distribution in the foreseeable future is the children of X as it is unlikely that they will all die before the funds are disbursed.

³ Bermuda Monetary Authority Guidance Notes (AML/ATF) Sect. 5.163

- a. The licensed undertaking must conduct full CDD (identification and verification) on the settlor and identify the children of X;⁴ and
 - b. The trustee licensed undertaking must conduct full due diligence on each member of the class prior to making any distributions.
3. Where a trust may benefit the spouse of X, the children of X, their spouses and civil partners, the grandchildren of X, and their spouses and civil partners the licensed undertaking must conduct full CDD on the settlor and then identify the adult members of the beneficial classes most likely to receive a benefit from the trust property.
 - a. The licensed undertaking must conduct full due diligence⁵ on each individual beneficiary before making any distributions to them.
 4. Where a trust is to benefit a named qualified charity, the licensed undertaking must conduct CDD on the settlor, identify the charity and conduct verification on the charity prior to making a distribution.⁶
 5. Where a trust is to benefit a named non-qualified charity, the licensed undertaking must conduct CDD on the settlor, identify the charity and conduct full due diligence on the charity prior to distribution (including the directors, trustees or organisers of the charity as appropriate).
 6. Where a trust is for non-charitable purposes, the licensed undertaking must conduct CDD on the “effective settlor”, the “promoter” and the directors of any company owned by the licensed undertaking as trustee of the purpose trust.⁷

Note: Interests in parts of the trust property can change significantly over time, particularly with discretionary trusts, e.g. one beneficiary's family occupies a property owned by the trust or one beneficiary runs an operating company held by a trust. Also, the circumstances of beneficiaries change over time, meaning that they may become more or less likely to receive assets from the trust. In this respect, licensed undertakings should have regard to the requirements for ongoing monitoring and maintenance of up-to-date CDD information under Regulation 7.

3.2.4 Control of the trust

Part 3 of the definition in 3.2.2 above requires licensed undertakings to treat as customers anyone who exercises control over the trust.

Control is defined as a power, either:

1. Exercisable alone;
2. Jointly with another person; or

⁴ See Bermuda Monetary Authority Guidance Notes (AML/ATF) Sections 5.67 (Identification includes obtaining the individual’s full name, residential address and date of birth).

⁵ For the definition of full “customer due diligence” see Regulation 5 and general GN Sect. 5.5 & 5.24.

⁶ See the definition of “qualified charity” in the Glossary.

⁷ Within the context of non-charitable purpose trusts used in a commercial context, it is often the case that a particular organisation or entity is promoting or behind the establishment of the structure, and such organisation or entity may or may not be an effective settlor or “controller”. A common term for such an organisation or entity is the “promoter” CDD should be conducted on the “promoter” of a non-charitable purpose trust.

3. With the consent of another person

Under the trust instrument or by law to either:

4. Dispose of, advance, lend, invest, pay or apply trust property;
5. Vary the trusts;
6. Add or remove a person as a beneficiary or to a class of beneficiaries;
7. Appoint or remove trustees; or
8. Direct, withhold consent to or veto the exercise of the powers mentioned above.

The powers above may be exercised by a settlor, beneficiaries (either individually or collectively), a protector or enforcer or other person named or referred to in the trust deed and having such power(s).

The definition above includes the trustees of a trust as they have prima facie control over a trust. This may be relevant where a licensed undertaking is co-trustee and should treat any other co-trustee as a customer and conduct CDD on them. A licensed undertaking which maintains trust records for unlicensed trustees, though the licensed undertaking is not acting as trustee, should regard the unlicensed trustees as customers and conduct CDD on them.

Regulation 3(5)(b) specifically excludes from the definition of control:

1. 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; or
2. Where an individual's consent is required in accordance with section 24(1) (c) of the Trustee Act 1975 (power of advancement).

3.2.5 Identifying and Verifying trust customers and beneficial owners in practice

In terms of who to identify and verify for CDD purposes, see section 3.2.1. above.

Note: Where a beneficiary is identified and known, then the identity of that beneficiary should be established when the trust is being settled or at the start of the business relationship.

In the case of a discretionary trust where a large number of beneficiaries are named, then the licensed undertaking must conduct full CDD (identification and verification) on the settlor, any "controller" (i.e. protectors, enforcers etc.) and on the active beneficiaries (e.g. as named in a recent letter of wishes). Further, the licensed undertaking must take reasonable measures to ascertain the names of the other members of the other beneficial classes. The licensed undertaking must conduct full customer due diligence (identification and verification) on any beneficiary prior to a distribution.

3.3 Timing of Customer Due Diligence

Regulation 6(1) requires a relevant person to apply customer due diligence measures when he:

1. Establishes a business relationship;
2. Carries out an occasional transaction;
3. Suspects money laundering or terrorist financing; or

4. Doubts the veracity or adequacy of documents, data or information previously obtained for the purpose of identification or verification.

Regulation 8 requires verification of the identity of a customer, and, where applicable, a beneficial owner, to take place before the establishment of a business relationship. However, the regulations also allow that, if it is necessary not to interrupt the normal conduct of business and there is little risk of money laundering or terrorist financing occurring, then verification may take place during the establishment of the business relationship, provided that it is done as soon as it is practicable after the trust is first established or someone becomes a beneficiary.

In the case of trust business, verification should ordinarily take place:

1. Before the trust is executed;
2. Before the licensed undertaking is appointed in place of a retiring trustee;
3. Before the licensed undertaking becomes co-trustee;
4. Before the licensed undertaking agrees to maintain trust records;
5. Before any distribution is made out of the trust;
6. Before a new beneficiary or class of beneficiaries is added;
7. When a new party becomes entitled to exercise control (see 3.2.2.3); and
8. Subsequently when there is any change in information previously provided.

It may also be relevant to conduct full customer due diligence if there is any change in control over the trust, such as the appointment of a new protector or enforcer or if the trust terms are varied so as to change the parties who may exert control over a trust (as defined above).

3.4 Identification and Verification Evidence

Chapter 5 of the General Guidance sets out the identification and verification evidence applicable to different types of customers. Licensed undertakings should follow the guidance in sections 5.46 to sections 5.208 relating to individuals and legal structures as applicable when performing due diligence on customers and beneficial owners.

Sections 5.168 to 5.170 set out the specific evidence which should be obtained in relation to a trust customer. (Note: Section 5.168 is relevant to trust companies except for the requirement to obtain the “names of all trustees” as in this case this will already be known, unless there is a situation where there are a number of co-trustees.)

3.4.1 Customer Due Diligence and Settled Assets

Licensed persons should also make appropriate inquiry as to the source of the assets a settlor intends to settle. This will necessarily vary from case to case and depend on many factors, such as the type of trust intended to be created, the relative and absolute value of the assets intended to be settled, the objectives of the settlor in creating the trust and the timeframe within which the parties are working.

3.4.2 Previous Due Diligence

Trustees act as a body. Co-trustees who are appointed after the settlement of the trust act together with the existing trustees and successor trustees “step into the shoes” of the predecessor trustees. A licensed undertaking who is an additional or successor trustee should enquire of the existing or predecessor trustees whether appropriate enquiries were made of the settlor or settlors at the time of creating the trust and at the time of addition of any assets to the trust, and seek to obtain the originals

or copies of the relevant due diligence documentation (e.g. verification of the settlor's identity and source of funds).

Having done this, the licensed undertaking should consider whether the information they have received is adequate, according to the circumstances of the particular case. However, in some cases such documentation may not be available or upon review may not be adequate. In such cases the licensed undertaking should make reasonable enquiries of its own:

(a) Where the Settlor is Alive

Where the settlor is still alive, the licensed undertaking should make the relevant enquiries of the settlor. There may be more than one settlor with respect to any trust. In the event that the trust was made by a declaration of trust and no settlor is named on the face of the deed, the licensed undertaking should ascertain who contributed the assets and make the relevant enquiries of that person. In the event that there was a corporate settlor, customer due diligence should also be conducted on that entity, as well as on any individual asset contributor.

(b) Where the Settlor is Dead

Where the settlor is dead or in the event of a corporate settlor is no longer in existence, the licensed undertaking should make reasonable enquiries about the settlor of such persons as may be appropriate in the circumstances of the particular case e.g. the existing or predecessor trustees or the beneficiaries.

In particular, if the beneficiaries are relatives of the deceased settlor, as will often be the case, appropriate enquiry of the oldest beneficiaries may be the most fruitful. In the case of a deceased settlor, the licensed undertaking should request a copy of the death certificate and conduct due diligence on the other parties to the trust per Section 3.

3.5 Collecting Relationship Information

Aside from obtaining trust customer and beneficial owner identification information and verifying that information, it should be noted that part of the Customer Due Diligence requirements also entail obtaining information on the purpose and intended nature of the relationship. Licensed undertakings should refer to 5.5, 5.6 and 5.44 of the General Guidance.

The following additional information on the purpose and intended nature of the relationship should also be collected for a trust relationship:

1. Type of trust (e.g. fixed interest, discretionary, testamentary, purpose, charitable);
2. Structure of any underlying companies or partnerships (if applicable);
3. Nature of activities undertaken by the trust and any underlying companies (having regard for sensitive activities and trading activities); and
4. Classes of beneficiaries, including charities or not-for-profit organisations named in the trust deed.

3.6 Non-Production of Documents of Information

Regulation 9 requires the termination of a business relationship where the relevant person has been unable to apply CDD measures in accordance with the Regulations.

In general, when it is decided that a trust relationship be terminated due to the inability to complete CDD, the licensed undertaking should take appropriate steps to stop acting as trustee of the trust or, as appropriate, not go ahead with any proposed distribution or other trustee action, e.g. change of beneficiaries, entering into a particular transaction or agreement, varying the trust to grant powers to a new party, and take steps to expedite this process.

As there may be legal ramifications for exiting the trust relationship, the licensed undertaking may decide to:

1. Take a decision to continue to act as trustee while referring the issue to a lawyer who will decide what exposure there is to taking that course of action;
2. Communicate with the settlor and/or beneficiaries regarding terminating the relationship; or
3. Communicate with the relevant parties (be it settlor, protector, beneficiaries etc.):
 - a. Resign as trustee and appoint a successor trustee;
 - b. Ask the individual or person with powers, e.g. the protector or enforcer to remove the licensed undertaking as trustee and appoint a successor trustee; or
 - c. Apply to the court to be removed.

It would be best for a licensed undertaking to resign its trusteeship in the event that parties to the trust that it is unable to apply CDD on the relevant persons. However, licensed trust entities are fiduciaries and the terms of the trust deed, legislation and common law principles all may impinge on their ability to resign without a continuing or successor trustee being in place. Additionally, the persons connected to a trust may all act independently of one another and if one beneficiary fails to comply with a request for information, while the rest comply, there may be no need to cease acting as trustee. In such situations, the licensed undertaking may not need to retire immediately, but may postpone taking any action in relation to that uncooperative individual or, as the case may be, the whole trust.

In the case where a licensed undertaking has been unable to complete CDD and it is decided that it must resign as trustee or postpone taking an action as trustee, the licensed undertaking should consider whether it is required to make a suspicious activity report to the Financial Intelligence Agency.⁸

It must be noted, however, that the obligations imposed upon a licensed undertaking in its role as trustee do not extend to situations that involve criminal activity. In situations where a licensed undertaking is made aware that criminal activity is occurring in relation to a trust, the licensed undertaking should obtain legal advice and file a suspicious activity report.

⁸ Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008: Regulation 9 (1)d: Requirement to cease transactions etc.

3.7 Transactions involving cash

Trust managers should seek to limit acceptance of cash or delivery of cash, or other stores of value such as traveller's cheques, other than de minimus amounts, for example in the case of the initial corpus of a trust. In extremely rare circumstances where this is not possible, and otherwise than in the case of de minimus amounts referred to above, there should be documented policies and procedures in relation to the handling of cash and other stores of value by trust managers. Such transactions should be reported upwards within the licensed undertaking's Bermuda structure and consideration given to informing the company's money laundering reporting officer.

4 SIMPLIFIED DUE DILIGENCE FOR TRUSTS

4.1 Overview

Simplified Due Diligence is an exception to the obligation to apply the standard CDD measures as set out in the Regulations.

4.2 Application of Simplified Due Diligence for Trusts

Regulation 10 provides that standard CDD measures are not required in the case where a relevant person enters into a business relationship with, or involving, certain named low risk products or situations.

For example, a licensed undertaking may perform simplified due diligence on the parties to the trust if the relevant party is the settlor of a pension, superannuation or similar scheme (a sponsoring employer), although it would need to complete CDD on such "sponsoring employer." In practice, the measures that must be applied by a trustee of an employee benefit scheme under Regulation 10(6) to verify the identity of the members of such a scheme (beneficiaries) may be limited to confirming that members (who will have been identified) are bona fide employees of the sponsoring employer.

Further guidance as to the circumstances under which simplified due diligence may be applied is provided in section 5.209 to 5.215 of the General Guidance.

In practice, applying simplified due diligence means not having to apply customer due diligence measures. However, licensed undertakings must have reasonable grounds for believing that the trust customer falls within Regulation 10 and may have to demonstrate this to the Authority. A risk assessment and ongoing monitoring of the trust relationship is still required.

Where the licensed undertaking applies simplified due diligence in relation to a trust customer, it shall document:

1. The details of its risk assessment; and
2. The nature of the simplified CDD measures.

5 ENHANCED DUE DILIGENCE FOR TRUSTS

5.1 Overview

Enhanced Due Diligence obliges the licensed undertaking to apply the enhanced customer due diligence measures as set out in Regulation 11.

5.2 When is Enhanced Due Diligence Appropriate?

Regulation 11 obliges the licensed undertaking to apply more enhanced customer due diligence measures in certain circumstances including:

1. Where the customers and/or beneficial owners have not been physically present for identification purposes (see 5.3 below);
2. Where the licensed undertaking proposes entering a business relationship or carrying out an occasional transaction with a politically exposed person (see 5.4 below); or
3. In any other situation which by its nature can present a higher risk of money laundering or terrorist financing (see section 2.2 for risk indicators).

5.3 Non Face-to-Face Customers

Regulation 11 states that where a customer has not been physically present for identification purposes, specific and adequate measures must be taken to compensate for the higher risk, for example by applying one or more of the following measures:

1. Ensuring that the customer's identity is established by obtaining additional documents, data or information;
2. Applying supplementary measures to verify or certify the documents supplied or requiring confirmatory certification by an AML/ATF regulated financial institution which is subject to equivalent Regulations; or
3. Ensuring that the first payment is carried out through an account opened in the customer's name with a banking institution.

Reference should be made to the requirements and guidance for non face-to-face identification and verification set out in Chapter 5 paragraphs 5.224-5.320 of the General Guidance.

5.4 Politically Exposed Persons (PEPs)

Regulation 11 (6) defines "politically exposed person." Regulation 11(4) states that a relevant person who proposes to have a business relationship or carry out an occasional transaction with a politically exposed person must:

1. Have approval from senior management for establishing a business relationship with that person;
2. Take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction; and

3. Where the business relationship is entered into, conduct enhanced ongoing monitoring of the business relationship.

In practice, under regulation 11 (4) licensed undertakings must have appropriate risk-sensitive policies, procedures and controls in place to determine if a person related to the trust structure (e.g. settlor, beneficiaries, protector, enforcer) or the directors or beneficial owners of such persons is a politically exposed person. Where there is a risk that such a customer may be a politically exposed person, licensed undertakings should make appropriate enquiries for example, by asking the customer for background information, researching publicly available information via the Internet, or, if the risk is substantial, consulting a commercial website listing politically exposed persons. If there is doubt about whether the customer is a politically exposed person, the customer should be treated as high risk.

Reference should be made to the requirements and guidance relating to PEPs set out in Chapter 5 paragraphs 5.231-5.244 of the General Guidance.

5.5 Other Higher Risk Situations

Regulation 11(1) (b) requires enhanced due diligence to be applied in situations which by their nature can present a higher risk of money laundering or terrorist financing. See Section 2 of this Guidance for examples of risk indicators.

Licensed undertakings' risk assessment and management systems must be capable of identifying such situations and appropriate enhanced due diligence measures must be applied to mitigate the risk involved. Once a customer is identified as of 'higher risk', further enquiry or investigation should be made/undertaken as appropriate to ensure that there is no suspicion of money laundering or terrorist financing. For example, enhance due diligence measures could include:

1. Obtaining further details of the source of the trust customer's funds and wealth, the proposed transactions and their purpose;
2. Obtaining additional evidence of identity;
3. Applying supplementary measures to verify or certify the documents supplied or requiring certification by a credit or financial institution; and
4. Obtaining senior management approval (i.e., an officer of suitable seniority such as a director or the legal or compliance officer) before establishing a business relationship with a higher risk customer.

6 ONGOING MONITORING FOR TRUSTS

6.1 Overview

The concept of ongoing monitoring is explained in section 5.283-5.312 of the General Guidance.

Effective ongoing monitoring is vital to maintaining a proper understanding of a trust customer's activities, and is an integral part of any effective AML/ATF programme. The basic regulatory requirement is that licensed undertakings must monitor their trust clients' transactions so as to be in a position to identify and scrutinise unusual and potentially suspicious activity requiring a report to

the Financial Intelligence Agency (FIA). An unusual transaction may be in the form of activity that is inconsistent with the expected pattern for that trust customer, or with the normal business activities for the trust structure involved.

A licensed undertaking shall pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. A licensed undertaking shall, to the extent possible, enquire into the background and purpose of such transactions and document its findings with a view to making this information available to the relevant competent authorities should the need arise.

Failure to adequately monitor customers' activities could expose a licensed undertaking to potential abuse by criminals, and may call into question the adequacy of systems and controls, or the prudence and integrity or fitness and propriety of the management of licensed undertakings.

6.2 Ongoing Monitoring Requirements

Under Regulation 7, trust companies are required to conduct ongoing monitoring of their trusts as follows:

1. A relevant person must conduct ongoing monitoring of a business relationship.
2. “Ongoing monitoring” of a business relationship means-
 - a. Scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds or requests for funds) to ensure that the transactions are consistent with the relevant person’s knowledge of the customer, his business and risk profile; and
 - b. So far as practicable keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

Ongoing monitoring must be carried out on a risk-sensitive basis, as required under Regulation 6(3). For example, if you have accepted a higher risk trust customer, these require enhanced due diligence and ongoing monitoring. This will generally mean more frequent or intensive monitoring.

Reference should be made to the requirements and guidance relating to PEPs set out in Chapter 5 paragraphs 5.283-5.303 of the General Guidance.

6.3 Developing a Trust Customer Profile

The development of an ongoing monitoring programme starts with good customer data. Thus, the licensed undertaking must be satisfied that the parties connected to the trust know the:

1. Nature and purpose of the Trust
2. Occupation (of the settlor/asset contributors)
3. Source of Income/Wealth (of the settlor/asset contributors)
4. Geographical risk
 - a. Country of residence (of settlor and beneficiaries)
 - b. Country of incorporation (of underlying companies)
5. Expected type of account activity for the trust
6. Relationship history (whether there were any issues related to the trust prior to take-over from the previous trustee).

This information will likely have been obtained in meeting the requirement to understand the purpose and intended nature of the business relationship (see section 3.5).

6.4 Who Should Be Monitored?

Licensed undertakings should monitor customers and beneficial owners as defined in section 3.2 and additionally any third parties with whom transactions may be entered into.

6.5 What Should Be Monitored?

The process of monitoring transactions involves combining knowledge of the customer profile, source of wealth and source of funds, and all applicable risk factors (noted above) with the capacity to evaluate whether the trust account activity is consistent with these factors.

The Authority's expectations in this regard are that, at the outset of the customer relationship, the risk profile of the expected activity, both in terms of the value and volume of anticipated transactions should be clearly defined and documented. As transactions are being processed, they should be compared to the profile so that exceptions to the pattern are highlighted and appropriate action taken, for example, further verification in relation to the transaction may be sought.

Monitoring can be broken down into two elements: monitoring of names, and monitoring of transactions.

1. Monitoring of names includes periodic names checks on customers and beneficial owners.
2. Transaction monitoring is not a mechanical process and does not necessarily require sophisticated electronic systems to be effective. The key elements of such a system are maintaining appropriate customer profiles to include the value and volume of expected transactions, and asking pertinent questions to elicit reasons for unusual or complex transactions, in order to determine whether there is a risk of money laundering.

6.6 How Should Accounts Be Monitored?

Monitoring of transactions involves examining:

1. Expected vs. actual transactions on the trust account
2. The frequency, volume and size of the transactions and whether they are consistent with nature and stated purpose of the trust
3. Whether the distributions are consistent with the trust's previous history
4. What linked company transactions are occurring and whether they make economic sense
5. Whether there are distributions or payments to higher risk jurisdictions or non-beneficiary/ third parties
6. Distributions in cash or bearer negotiable instruments
7. Any other unusual activity.

Trust companies should be alert to the following:

8. Changes in Strategy/Purpose/Nature of the Trust
9. Change in transactions or relationships including new geographical connections, or connections with "high risk" jurisdictions
10. Substantial changes in instructions on the trust

11. Changes in beneficiaries
12. Occasional transactions – if suspicious
13. Unusual, complex or uncharacteristically large transactions
14. Doubts about the veracity of previous details provided by parties to the trust e.g. identity/addresses etc.
15. Other suspicions that Money Laundering may have taken place/may be about to take place.

Where a customer's transactions or activities are not consistent with their risk profile, consideration must be given as to whether any additional enquiries should be made to address any potential risk. These should include source of funds checks, where considered appropriate, to ensure the trust customer's activity is consistent with the knowledge and expectations established by the customer due diligence information and risk assessment.

Each time assets are added to the property of the trust by a new or existing settlor, the licensed undertakings should make appropriate enquiries as to the source of the assets and the objectives of the settlor.

A licensed undertaking shall periodically review the adequacy of identification information obtained in respect of customers and beneficial owners and ensure that the information is kept up-to-date. A system to track outstanding due diligence reflecting the aging of outstanding information and the risk rating of trust account is particularly useful in this respect. The Authority suggests that there may be opportunities for normal physical repeat monitoring (i.e. keeping the records up-to-date) which might present themselves from time to time, such as:

1. A change in the settlor's or beneficiaries' residential address
2. A change in the settlor's business address
3. Appointment of a new co-trustee
4. The issue of a new Letter of Wishes

Records must be kept of the documents and information that is the subject of ongoing monitoring.

6.7 Risk-Based Approach to Monitoring

The extent of monitoring will be linked to the risk profile of the customer which has been determined through the risk assessment required by Regulation 6(3).

To be most effective, resources should be targeted towards relationships presenting a higher risk of money laundering or terrorist financing. Regulation 11 requires licence holders to have particular regard to whether a business relationship poses a higher risk. High risk relationships, e.g. those involving PEPs, will generally require more frequent intensive monitoring. In order to monitor high risk situations, a licence holder must consider:

1. Whether it has adequate procedures or management information systems in place to provide relationship managers and reporting officers with timely information, including information on any connected accounts or relationships;

2. How it will monitor the sources of funds, wealth and income for higher risk trust customers and how any changes in circumstances will be recorded;
3. Conducting an annual independent review of CDD information, activity and transactions.

6.8 Sanctions & Extra-Territoriality

Licensed undertakings should note the guidance with respect to sanctions and extra territoriality in sections 1.41 and 5.304 to 5.312 of the General Guidance.

7 RELIANCE ON THIRD PARTIES

Regulation 14 allows licensed undertakings to rely on certain “relevant persons” including financial institutions and independent professionals to undertake CDD checks on the licensed undertakings’ behalf, provided that they are supervised and meet the definition in Regulation 14(2).

For the avoidance of doubt, notwithstanding the reliance upon an eligible professional or regulated entity, the licensed undertaking or relying institution shall remain liable and accountable to the Authority for any failure to apply appropriate checks. Additionally, no licensed undertaking shall rely on an intermediary to conduct ongoing monitoring.

Reference should be made to the requirements and guidance relating to reliance set out in Chapter 5 paragraphs 5.245-5.282 of the General Guidance

8 MONITORING OF COMPLEX &/OR UNUSUAL TRANSACTIONS

Under Regulation 16(2), regulated financial institutions must have policies and procedures which provide for the identification and scrutiny of complex or unusually large transactions.

8.1 When Should I Be Suspicious?

The following list is not exhaustive but sets out some of the main indications that a trust-related transaction is suspicious:

1. Trust established which then receives multiple cash deposits or deposits from multiple sources;
2. Trust established with high amounts that are inconsistent with customer profile;
3. Trust established with funds originating from foreign banks in high ML/TF jurisdictions;
4. Unusual large cash payments in circumstances where payment would normally be made by cheque, banker’s draft and so on;
5. Trust clients transferring large sums of money to or from overseas locations with instructions for payment in cash; or
6. Large third-party cheques endorsed in favour of the Trust client.

Trusts used in conjunction with underlying Corporate Structures:

7. The purchase of underlying companies or subsidiaries that have no obvious commercial purpose;
8. Unwillingness to disclose the source of funds in the underlying structures;
9. Frequent changes to shareholders or directors in the underlying structures;

10. Excessive or unnecessary use of nominees;
11. Where the rationale for the transactions in underlying companies is vague or without explanation;
12. Unnecessary granting of power of attorney; or
13. Out of the ordinary or inexplicable changes to instructions.

8.2 Suspicious Activity Reporting Requirements

Anyone in the licensed undertaking to whom information or other matters comes in the course of the business as a result of which he knows or suspects that a person is engaged in money laundering or terrorist financing is required to report his/her information to the Financial Intelligence Agency (under Sections 46(5) of the Proceeds of Crime Act 1997 or, as the case may be, section 9 or paragraph 1 of Part 1 of Schedule 1 to the Anti-Terrorism (Financial and Other Measures) Act 2004.

The licensed undertaking's requirement to report a suspicious transaction will arise when the licensed undertaking engages in a transaction for a client, or on behalf of a client, in relation to the activities referred to in Chapter 6 of the general AML/ATF Guidance Notes.

8.3 Filing a Suspicious Activity Report with the Financial Intelligence Agency (FIA)

A licensed undertaking's reporting officer shall consider if the circumstances are suspicious so as to warrant the filing of a Suspicious Activity Report (SAR) and document the basis for his determination where:

1. There are indications that a trust-related transaction is suspicious;⁹
2. When a proposed activity or transaction gives rise to a knowledge or suspicion of money laundering or terrorist financing;
3. The licensed undertaking is, for any reason, unable to complete CDD measures; or
4. The customer is reluctant, unable or unwilling to provide any information requested by the Trustee or decides to terminate with no apparent good reason their contact with the Trustee.

Suspicious Activity Reports are used to report suspicious transactions or known violations of Bermuda Anti-Money Laundering and Anti-Terrorist Financing law (the "AML/ATF Regime") to the FIA. As of 1st October 2011, the FIA no longer accepts any manually submitted SARs (including those faxed or emailed).

As all SAR filing is now electronic, in order to file a SAR you should:

1. Register with goAML by filing out a Registration form on the www.fia.bm website
2. Obtain your login information
3. File your SAR(s) online
4. Contact the FIA for any training issues at: analyst@fia.bm

The completion of a SAR enables Reporting Entities to properly discharge their duties under the AML/ATF Regime.

⁹ See BMA Guidance Notes (AML/ATF) Ch.6 and Sect. 5.301.

8.4 Offences: Failure to Report & Tipping Off

Where a person fails to comply with the obligation under POCA or the ATFA to make disclosures to a reporting officer and/or to the Financial Intelligence Agency as soon as is reasonably practicable after the information giving rise to the knowledge or suspicion comes to the attention of the member of staff, that person may be liable to criminal prosecution. The criminal sanction, under POCA or the ATFA, is a prison term of up to three years on summary conviction or ten years on conviction in indictment and/or a fine.¹⁰

Once an internal or external suspicious activity report has been made, it is a criminal offence for any person knowing or suspecting that such a report has been made, to disclose to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure (“tipping off”).¹¹

For more information on suspicious transaction reporting and related offences for non-compliance, see Chapter 6 of the General Guidance.

9 INTERNAL POLICIES AND COMPLIANCE

Under regulation 16 there is a requirement for licensed undertakings to establish and maintain appropriate and risk-based policies and procedures in order to prevent operations related to money laundering and terrorist financing.

These procedures, policies and controls shall include, amongst other things, CDD measures, record retention, the detection of unusual and suspicious transactions and the obligation to make suspicious transaction reports.

A licensed undertaking shall take into consideration money laundering and terrorist financing threats that may arise from the use of new or developing technologies, especially those that favour anonymity, in formulating its policies, procedures and controls.

Licensed undertakings should refer to Chapter 2 of the General Guidance.

10 TRAINING

Regulation 18 specifies that a licensed undertaking must train its staff on the risks of Money Laundering/Terrorist Financing, the relevant legislation and their obligations under that legislation. Chapter 7 of the General Guidance entitled, “Staff Training & Awareness,” should be read and understood.

Specific to trust companies, this training should enable trust staff to more readily identify how trust vehicles are structured for use in supporting both money laundering and terrorist financing schemes, so that they are able to effectively vet clients and circumvent risky schemes.

¹⁰ See Bermuda Monetary Authority Guidance Notes (AML/ATF) Section 6.30

¹¹ See Bermuda Monetary Authority Guidance Notes (AML/ATF) Section 6.37

GLOSSARY OF TERMS

Contingent interest

This interest is subject to the satisfaction of one or more conditions precedent, such as attaining a specified age or surviving a specified person. Failure to satisfy all conditions precedent results in the failure of the interest.

Defeasible interest

An interest is defeasible if it can be terminated in whole or in part, without the consent of the beneficiary, by the happening of an event, such as the failure of a condition subsequent or the exercise by the trustees of a power to terminate or vary the interest.

Indefeasible interest

An interest is indefeasible if it cannot be terminated in whole or in part without the consent of the beneficiary by the happening of any event.

Interest in possession

This interest is the right to enjoy the use or possession of the fund and under the Regulations relates solely to an interest in the capital of the fund.

Interest in remainder

This is the beneficiary's right to the capital of the fund which is postponed to one or more prior interests in possession in the income of the fund.

Interest in reversion

This is the right of the settlor to receive any part of the fund at the end of the trust. It occurs in cases including when the trust fails because all of the beneficiaries die or a life interest terminates and there are no remainder beneficiaries.

Qualified Charity

For the purposes of these guidance notes, a “qualified charity” is any charity that is regulated in its jurisdiction of establishment; not located or having its principal operations located in: (a) countries where corruption is known, or perceived, to be a common source of wealth; (b) countries known to have deficiencies in the AML/ATF supervisory regimes will increase the risk (see <http://www.fatf-gafi.org/> for a list of higher risk countries); (c) countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (UN); or (d) countries identified by credible sources as providing funding or support for terrorist activities that have designated terrorist organisations operating within them; and is a well-known and readily recognisable charitable organisation. Examples of “qualified charities” include the International Red Cross, Médecins Sans Frontières, World Wildlife Fund, UN related charities etc., and in the case of Bermuda, charities currently registered under the Charities Act. Charities which fall outside this description should be considered “non-qualified charities.”

Customer verification on registered Bermuda non-profit organisations or charities can be done via a search at Government’s Registry General’s office. This government list is updated monthly. Alternatively one can search the Centre on Philanthropy’s website at:

<http://www.centreonphilanthropy.org/nonprofitdirectory> which lists registered charitable organisations under The Charities Act 1978.

Source of Funds

Source of funds includes the immediate source of funds from which property has derived i.e. a bank account. Knowing who provided the funds and the account or product from which they have derived is necessary in every case. In most cases, the source of funds will be a bank account that can be related directly to the settlor. Where this is not the case, for example when third party funding is involved, trust companies may take a risk based approach and where appropriate make further enquiries about the relationship between the ultimate underlying principal of the funds and the settlor. In addition, consideration must be given to verifying the identity of the ultimate underlying principal, i.e. the provider of the funds.

Source of Wealth

Source of wealth is distinct from source of funds and describes the origins of a settlor(s)' financial standing or total net worth i.e. those activities which have generated the settlor(s)' funds and property. It is advisable to obtain information sufficient to establish the source of income or wealth for trust relationships, primarily because they tend to carry a higher risk of money laundering or terrorist financing relative to other types of accounts (e.g. local retail accounts) because of their risk profile.

Vested interest

This is an interest not subject to any conditions precedent. It is held by the beneficiary completely and inalienably, even if it is still under the control of the trustees at that time.

REFERENCES

The references below assisted with the preparation of these trust-sector guidance notes:

Bermuda Monetary Authority. *Guidance Notes - AML/ATF Regulated Financial Institutions on Anti-Money Laundering & Anti-Terrorist Financing*. Hamilton: Bermuda Monetary Authority. 2010. Print.

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<<http://www.lawsociety.org.uk/productsandservices/practicenotes/aml/4990.article>>

FURTHER INFORMATION

The Bermuda Monetary Authority's AML Unit is able to assist licensed undertakings, their staff and the public in providing general information relating to Bermuda's AML/ATF legislation and framework.

Enquiries can be directed to the AML/ATF unit via:

- Email to: aml@bma.bm
- Telephone: 1(441) 295-5278 - Bermuda Monetary Authority (main line)

The information contained in this document is intended only to provide a summary and general overview on these matters. It is not intended to be comprehensive. It does not constitute, nor should it be treated as, legal advice or opinions. This document may contain statements of policy which reflect the Bermuda Monetary Authority's administration of the legislation in carrying out its statutory functions. The Bermuda Monetary Authority (Authority) accepts no liability for any loss suffered as a result of reliance on this publication. The Authority recommends that independent professional advice be sought.

The information contained herein is current as at the date of this document.