

Annex I

Sector-Specific Guidance Notes for Trust Business

These Sector-Specific Guidance Notes (SSGN) are annexed to, and should be read in conjunction with, the general Guidance Notes for Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Regulated Financial Institutions (RFI) on AML/ATF 2021 (GN).

Table of Contents

INTRODUCTION	3
STATUS OF THE GUIDANCE	4
SENIOR MANAGEMENT RESPONSIBILITIES AND INTERNAL CONTROLS ...	5
LINKS BETWEEN TRUST BUSINESS PRACTICES AND AML/ATF POLICIES, PROCEDURES AND CONTROLS.	7
OWNERSHIP, MANAGEMENT AND EMPLOYEE CHECKS	8
MONITORING AND MANAGING COMPLIANCE	8
<i>RISK-BASED APPROACH FOR RFIS CONDUCTING TRUST BUSINESS</i>	9
<i>CUSTOMER DUE DILIGENCE</i>	11
NATURE OF THE CUSTOMER’S BUSINESS AND PURPOSE AND INTENDED NATURE OF THE BUSINESS RELATIONSHIP	12
SOURCE OF WEALTH AND SOURCE OF FUNDS	13
DEFINITION OF CUSTOMER IN A TRUST BUSINESS CONTEXT	14
DEFINITION OF BENEFICIAL OWNER IN A TRUST BUSINESS CONTEXT	15
SPECIFIED INTEREST.....	16
CLASS OF PERSONS TO BENEFIT	16
CONTROL OVER THE TRUST	17
OBTAINING AND VERIFYING CUSTOMER IDENTIFICATION INFORMATION.....	18
OBTAINING AND VERIFYING BENEFICIAL OWNER INFORMATION	19
TIMING OF CUSTOMER DUE DILIGENCE.....	21
PREVIOUS DUE DILIGENCE AND RELIANCE ON THIRD PARTIES	23
REFUSING OR TERMINATING TRUST BUSINESS	24
CUSTOMER TRANSACTIONS OR RELATIONSHIPS INVOLVING CASH OR BEARER INSTRUMENTS	25
APPLICABILITY OF SIMPLIFIED DUE DILIGENCE TO TRUST BUSINESS.....	25
ENHANCED DUE DILIGENCE FOR TRUST BUSINESS	26
<i>INTERNATIONAL SANCTIONS</i>	28
<i>ONGOING MONITORING</i>	28
<i>SUSPICIOUS ACTIVITY REPORTING</i>	31
FAILURE TO REPORT AND TIPPING-OFF OFFENSES.....	32
<i>EMPLOYEE TRAINING AND AWARENESS</i>	33
<i>RECORD-KEEPING</i>	35
RISK FACTORS FOR TRUST BUSINESS	35

ANNEX I

SSGN FOR TRUST BUSINESS

Introduction

- I.1 This annex sets forth guidance on AML/ATF obligations under the acts and regulations of Bermuda that are specific to trust business.
- I.2 Under Section 42A(1)(g) of POCA, persons carrying on trust business within the meaning of Section 9(3) of the Trusts (Regulation of Trust Business) Act 2001 (Trusts Act) are designated as AML/ATF RFIs.
- I.3 Under Section 9(3) of the Trusts Act, a person carries on trust business if the person provides the services of a trustee as a business, trade, profession or vocation.
- I.4 Section 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002 (Trusts Exemption Order) exempts certain companies engaged in private trust business from the licensing requirements of Section 9 of the Trusts Act. Under Section 42A(1)(g) of POCA, private trust companies that are exempted under Section 3 of the Trusts Exemption Order are also designated as RFIs, unless either:
- a) The private trust company is an exempted person that utilises the services of a corporate service provider (CSP) business, licensed by the BMA, within the meaning of Section 2(1) of the Corporate Service Provider Business Act 2012; or
 - b) The private trust company is an exempted person that has in its corporate structure, or engages the services of, a trust business, licensed by the BMA, within the meaning given in Section 9(3) of the Trusts Act.
- I.5 All RFIs must comply with the acts and regulations, and with the general AML/ATF GN issued by the BMA.
- I.6 Schedule 1, Section 5(2) of the Trusts Act, as amended, states that in determining whether a person carrying on trust business is conducting its business in a prudent manner, the BMA will take into account any failure to comply, among other things, with:
- a) POCA;
 - b) ATFA;
 - c) POCR;
 - d) TrustsAct;
 - e) Relevant codes of practice issued by the BMA; and
 - f) International sanctions in effect in Bermuda.
- I.7 For the purposes of these SSGN, the terms “AML/ATF RFI” and “RFI” should be understood to include persons conducting the trust business described in paragraph

I.3, subject to the limit exemption described in paragraph I.4. The term “trust business” should be understood to include any and all of the activities described in paragraph I.3.

- I.8 RFI's conducting trust business should read these SSGN in conjunction with the general GN for AML/ATF RFI's on AML/ATF. This annex supplements, but does not replace, the general GN.
- I.9 Portions of this annex summarise or cross-reference relevant information that is contained in detail in the general GN. The detailed information in the general GN remains the authoritative guidance.
- I.10 Portions of this annex include sector-specific information, such as risk indicators that are particular to trust business. This sector-specific information should be considered as supplementary to the general GN.
- I.11 Where a customer is a legal arrangement that differs in control or ownership structure from that of a Bermuda trust, for example an anstalt, stiftung, fiducie, treuhand, fideicomiso or foundation, an RFI should establish an understanding of the control and ownership structure based on legal requirements applicable in the legal arrangement's home jurisdiction, and the RFI should obtain and verify information equivalent to that required by this guidance for similar control and ownership structures.

Status of the guidance

- I.12 Pursuant to Section 49M of POCA and 120 of ATFA, these SSGN are issued by the BMA under Section 5(2) of the POCA SEA, approved by the Minister of Legal Affairs, and available for download on the website of the BMA at www.bma.bm.
- I.13 These SSGN are of direct relevance to all senior management, inclusive of the compliance officer, and to the reporting officer. The primary purpose of the SSGN is to provide guidance to those who establish and update the RFI's risk management policies, procedures and controls for the prevention and detection of ML/TF.
- I.14 The Supreme Court (Court), or the BMA, 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 Legal Affairs and issued by the BMA. Requirements of the Court and the BMA are detailed in the provisions of Section 49M of POCA, POCA Regulation 19(2), Section 120, and paragraph 1(6) of Part I, Schedule I of ATFA and Section 20(6) of the POCA SEA.
- I.15 When a provision of the acts or regulations is directly described in the text of the guidance, the SSGN use the term “**must**” to indicate that the provision is mandatory.

- I.16 In other cases, the guidance uses the term “**should**” to describe how the BMA expects an RFI to meet its legal and regulatory obligations, while acknowledging an RFI may meet its obligations via alternative means, provided that those alternatives effectively accomplish the same objectives.
- I.17 Departures from this guidance, and the rationale for so doing, should be documented, and RFIs will have to stand prepared to justify departures to authorities such as the BMA.
- I.18 RFIs should be aware that under Section 16(1) of the Financial Intelligence Agency Act 2007, the FIA may, in the course of enquiring into a suspicious transaction or activity relating to ML/TF, serve a notice in writing on any person requiring the person to provide the FIA with such information as it may reasonably require for the purpose of its enquiry.
- I.19 Detailed information is set forth in the general GN, beginning with the **Preface**.

Senior management responsibilities and internal controls

- I.20 The AML/ATF responsibilities for senior management of an RFI conducting trust business are governed primarily by POCA, POCA SEA, ATFA and POCR Regulations 16 through 19.
- I.21 The AML/ATF internal control requirements for RFIs conducting trust business are governed primarily by Part 3 of the POCR Regulations.
- I.22 POCR Regulation 19 provides that failure to comply with the requirements of specified POCR Regulations is a criminal offence and carries with it significant penalties. On summary conviction, the penalty is a fine of up to \$50,000. Where conviction occurs on indictment, penalties include a fine of up to \$750,000, imprisonment for a term of two years or both.
- I.23 Section 20 of the POCA SEA empowers the BMA to impose a civil penalty on any person supervised by the BMA in an amount up to \$10,000,000 for each failure to comply with specified POCR Regulations. The POCA SEA also provides for a number of criminal offences, including carrying on business without being registered pursuant to Section 9 of the POCA SEA.
- I.24 Senior management of trust business RFIs should foster and promote a culture of compliance as a core business value. Senior management should ensure that an RFI is committed to identifying, assessing and effectively mitigating ML/TF risks when establishing or maintaining business relationships.
- I.25 Under Bermuda’s acts and regulations, senior management in all RFIs must:
- a) Ensure compliance with the acts and regulations;

- b) Approve the RFI's policies, procedures and controls relating to its AML/ATF obligations;
 - c) Identify, assess and effectively mitigate the ML/TF risks posed by its customers, business relationships, countries or geographic areas, services, delivery channels, products and transactions;
 - d) Ensure that AML/ATF risk assessments remain documented, relevant and appropriate given the RFI's current risk profile;
 - e) Appoint a compliance officer at the managerial level to oversee the establishment, maintenance and effectiveness of the RFI's AML/ATF policies, procedures and controls;
 - f) Appoint a reporting officer to process disclosures;
 - g) Screen employees against high standards;
 - h) Ensure that adequate resources are devoted to the RFI's AML/ATF policies, procedures and controls;
 - i) Ensure appropriate training to relevant employees;
 - j) Independently audit and periodically test the RFI's AML/ATF policies, procedures and controls for effectiveness;
 - k) Ensure the RFI is prepared for compliance inquiries and inspections by competent authorities, including but not limited to sample testing of customer files; and
 - l) Recognise potential personal liability if legal obligations are not met.
- I.26 RFI's must establish and maintain detailed policies, procedures and controls that are adequate and appropriate to forestall and prevent operations related to ML/TF.
- I.27 RFI's should consider using proven technology-driven solutions to minimise the risk of error and find efficiencies in their AML/ATF processes.
- I.28 RFI's conducting trust business should include their AML/ATF policies and procedures with any application to become a licensed undertaking. RFI's should also submit a business risk assessment and client risk assessment at the time of application.
- I.29 Where a Bermuda RFI conducting trust business has branches, subsidiaries, representative offices or members of any financial group 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 Bermuda's acts and regulations.
- I.30 Attempts to launder money through trust business may be carried out in any one or several of three ways:
- a) Externally, by a customer seeking to place, layer or integrate illicit assets;
 - b) Internally, by a trustee, director, manager or employee, either individually or in collusion with others inside and/or outside the RFI conducting trust business; and

- c) Indirectly, by a third-party service provider or by an RFI, independent professional or other intermediary facilitating transactions involving illicit assets on behalf of another person.

I.31 The majority of this annex addresses attempted ML by customers. ML risks involving third parties are addressed in paragraphs I.141 through I.150. ML risks involving internal senior management, trustees, directors, managers or employees are addressed primarily via fit and proper requirements for trust business and in paragraphs I.37 through I.40.

I.32 Specific requirements for an RFI's detailed policies, procedures and controls are set forth in **Chapters 2 through 11** of the general GN.

I.33 Detailed information is set forth in **Chapter 1: Senior Management Responsibilities and Internal Controls**.

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

I.34 Persons carrying on trust business may be subject to acts and regulations creating requirements that achieve some of Bermuda's AML/ATF objectives. These acts and regulations include, but are not limited to:

- a) Trusts Act;
- b) Trusts Exemption Order; and
- c) Trusts (Regulation of Trust Business) (Reporting Accountants) (Facts and Matters of Material Significance) Regulations 2006.

I.35 Persons carrying on trust business may also be subject to the requirements, principles, standards and procedures set forth in additional guidance documents. These guidance documents for trust business include, but are not limited to:

- a) Corporate Governance Policy for Trusts (Regulation of Trust Business) Act 2001 (BMA – July 2020);
- b) Guidance Notes, Trusts (Regulation of Trust Business) Act 2001, Information for Prospective Applicants (BMA – April 2020);
- c) Statement of Principles made pursuant to Section 6 of the Trusts (Regulation of Trust Business) Act 2001 (BMA – December 2019);
- d) Code of Practice made pursuant to Section 7 of the Trusts (Regulation of Trust Business) Act 2001 (BMA – December 2019); and
- e) Information Bulletin, Fit and Proper Persons (BMA – October 2009).

I.36 The requirements of the acts, regulations and additional guidance documents described in paragraphs I.34 through I.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 and regulations and the SSGN and general GN, whether as part of its existing business processes or through separate processes.

Ownership, management and employee checks

- I.37 To guard against potential ML involving owners, directors, managers and employees of a trust business, POOCR Regulation 18(1)(c) requires RFIs conducting trust business to screen such persons against high standards. Additional guidance on screening is set forth in paragraphs 1.73 through 1.77 of the general GN and in the Information Bulletin, Fit and Proper Persons described in paragraph I.35.
- I.38 RFIs should ensure that screenings are conducted both for the RFI itself and for any intermediary or third-party service provider.
- I.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.
- I.40 Working with intermediaries and third-party service providers that are licensed and that apply AML/ATF measures at least equivalent to those in Bermuda is likely to reduce the measures a Bermuda RFI conducting trust business will need to undertake in order to meet its screening obligations.

Monitoring and managing compliance

- I.41 RFIs must appoint a qualified and competent compliance officer, who must be at the managerial level, who is appropriately qualified and trained and who is required to:
- a) Ensure that the necessary compliance programme procedures and controls required by the POOCR are in place; and
 - b) Coordinate and monitor the compliance programme to ensure continuous compliance with the POOCR.
- I.42 RFIs must also appoint a qualified and competent reporting officer who, under the RFI's policies and procedures:
- a) Receives disclosures from the RFI's employees of any knowledge, suspicion or reasonable grounds for suspicion of ML/TF;
 - b) Receives access to all necessary records in a timely manner;
 - c) Considers employee disclosures in light of all other relevant information;
 - d) Makes final determinations on whether the reporting officer has knowledge, suspicion or reasonable grounds for suspicion of ML/TF; and
 - e) Where such knowledge, suspicion or reasonable grounds for suspicion exists, makes external reports to the FIA.

- I.43 The role, standing and competence of the compliance officer and the reporting officer, and the manner in which the RFI's policies, procedures and controls are designed and implemented, directly impact the effectiveness of an RFI's AML/ATF arrangements, and the degree to which the RFI is in compliance with Bermuda's acts and regulations. For additional information on the roles and responsibilities of the compliance officer and reporting officer, see paragraphs 1.38 through 1.55 of the general GN.

Risk-based approach for RFIs conducting trust business

- I.44 As described in **Chapter 2: Risk-Based Approach**, RFIs, including trust businesses, must adopt a risk-based approach to managing ML/TF risks. In developing a business risk assessment and identifying and assessing the ML/TF risk to which they are exposed, trust businesses should consider a range of factors, which may include:
- a) The nature, scale, diversity and complexity of their business;
 - b) Target markets;
 - c) The number of customers already identified as high-risk;
 - d) The jurisdictions the trust business is exposed to, either through its own activities or the activities of customers, especially in jurisdictions with relatively higher levels of corruption or organised crime, and those jurisdictions listed as higher risk by CFATF and FATF; and
 - e) The internal audit function and regulatory findings.
- I.45 The NAMLC has publicly released a report on Bermuda's national assessment of ML/TF risks. RFIs should take into account the results available to them from this and future national risk assessments.
- I.46 Generally, the level of inherent ML/TF risk associated with trust business is higher than that associated with standard retail banking. The global reach of trusts, the high value of trust asset transfers and the risk profile of settlors and other trust customers, including high-net-worth natural persons and PEPs, both resident and non-resident, contribute to this higher inherent level of risk.
- I.47 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, business relationship, country or geographic area, service, delivery channel, product or transaction.
- I.48 When designing and evaluating a new product or service, an RFI conducting trust business must, prior to launch, assess the ML/TF risks of the product or service being used.
- I.49 Each RFI must ensure that its risk assessment methodology and the results of its risk assessments are documented, regularly reviewed and amended to keep them up-to-date, approved by senior management and available to be shared promptly

with competent authorities.

- I.50 RFI's conducting trust business must employ a risk-based approach in determining:
- a) Appropriate levels of CDD measures, including whether to apply enhanced CDD;
 - b) Risk-mitigation measures commensurate with the risks posed by the RFI's customers, business relationships, countries or geographic areas, services, delivery channels, products and transactions;
 - c) The scope and frequency of ongoing monitoring;
 - d) Measures for detecting and reporting suspicious activity; and
 - e) Whether and how to launch new products, services or technologies.
- I.51 The purpose of an RFI applying a risk-based approach is to ensure that its compliance resources are allocated to the risk areas where they are needed and where they have the greatest impact in preventing and suppressing ML/TF and proliferation financing.
- I.52 The higher the risk an RFI faces from any particular combination of customer, business relationship, country or geographic area, service, delivery channel, product or transaction, the stronger and/or more numerous the RFI's mitigation measures must be.
- I.53 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.
- I.54 RFI's conducting trust business can be gatekeepers who, in addition to serving the interests of their customers, serve the broader interests of the public. 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.
- I.55 Regardless of a particular trust or other legal arrangement's features, RFI's must use a risk-based approach to determine whether there are legitimate commercial purposes for the size, structure and level of transparency of each customer and whether the customer or business relationship entails a heightened level of ML/TF risk.
- I.56 Although RFI's conducting trust business should target compliance resources toward higher-risk situations, they must also continue to apply risk mitigation measures to any standard and lower-risk situations, commensurate with the risks identified. The fact that a customer or transaction is assessed as being lower-risk does not mean the customer or transaction is not involved in ML/TF.
- I.57 Detailed information on the requirement that RFI's 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**.

- I.58 Using the risk-based approach, each RFI conducting trust business should determine its risk tolerance, which is the amount of ML/TF risk the RFI will accept in pursuit of its business goals.
- I.59 Each RFI should consider:
- a) The risks it is willing to accept;
 - b) The risks it is unwilling to accept;
 - c) The risks that will be sent to senior management for a decision; and
 - d) Whether the RFI has sufficient capacity and expertise to effectively manage the risks it decides to accept.
- I.60 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.
- I.61 Trusts will often involve numerous persons, including settlors, beneficiaries, trustees, co-trustees, third-party controllers, such as enforcers, promoters or protectors, and other persons with a range of rights and responsibilities. The persons connected with a trust may be natural persons, legal entities, other trusts or other legal arrangements, and they may be located in more than one jurisdiction.
- I.62 RFIs conducting trust business should take note of the heightened ML/TF risks that arise when a settlor, trustee or other person associated with the trust withholds or otherwise acts to obscure any of the following:
- a) The true nature and intended purpose of the trust;
 - b) The true nature and intended purpose of the trust's business relationship with the RFI; or
 - c) Information on the person(s) truly intended to benefit from the trust.
- I.63 Specific indicators of higher risk in trust business are discussed in detail in paragraphs I.227 through I.233 of this annex.

Customer due diligence

- I.64 RFIs conducting trust business must carry out CDD.
- I.65 Detailed information on CDD is set forth in **Chapters 3, 4 and 5** of the general GN, and paragraphs I.64 through I.174 of this annex.
- I.66 Carrying out CDD allows RFIs to:

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

I.67 CDD measures that must be carried out include:

- a) Identifying and verifying the identity of each customer;
- b) Understanding the nature of the customer's business and the purpose and intended nature of the customer's business relationship with the RFI;
- c) Identifying the source of wealth and source of funds associated with the customer;
- d) Collecting information about the legal powers that regulate and bind a customer that is a legal person or legal arrangement;
- e) Identifying and verifying signatories, directors, trustees, settlors, beneficiaries and other persons exercising control over the management of the customer or its relationship with the RFI;
- f) Identifying and taking adequate measures on a risk-sensitive basis to verify the identity of the beneficial owner(s) or customer;
- g) For a customer that is a legal entity or legal arrangement, identifying the name and verifying the identity of the relevant natural person having the position of chief executive or a person of equivalent or similar position at the customer; and
- h) Updating the CDD information at appropriate times. This includes ensuring that information on the ultimate beneficial owners and/or controllers of companies, partnerships and other legal entities is known to the RFI, properly updated and recorded.

I.68 Additional information on CDD for legal arrangements is set forth in paragraphs 4.61 through 4.143 in the general GN.

Nature of the customer's business and purpose and intended nature of the business relationship

I.69 An RFI must understand the nature of the customer's business and the purpose and intended nature of each proposed business relationship or transaction. In some instances, the nature of the customer's business and the purpose and intended nature of a proposed business relationship may appear self-evident. Nonetheless, an RFI must obtain information that enables it to categorise the customer's

business and the nature, purpose, size and complexity of the business relationship, such that the business relationship can be effectively monitored.

- I.70 An RFI should obtain information sufficient for it to be reasonably satisfied that there is a legal commercial or personal rationale for the trust business work being undertaken.
- I.71 To obtain an understanding sufficient to monitor a trust business relationship or transaction, an RFI should collect information including but not limited to:
- a) The customer's goals for the trust business relationship or transaction;
 - b) The occupation of the settlor or similar person(s);
 - c) The assets to be held or managed by the trust;
 - d) The source of wealth and source of funds to be used in the trust business relationship or transaction;
 - e) The anticipated type, volume, value, frequency, duration and nature of the activity that is likely to be undertaken through the trust business relationship or transaction;
 - f) The geographic connections of the customer, its activities and each settlor, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), beneficial owner, administrator, advisor, operator, employee, manager, director or other person who is able to exercise significant power over the trust property, trust business relationship or occasional transaction;
 - g) Documentation evidencing the relationships between the persons connected with the trust and the ultimate natural person beneficial owner(s);
 - h) The means of payments or other transfers (e.g., cash, wire transfer or other means of transacting);
 - i) Whether there is any mail holding arrangement, or care of (c/o) mail arrangement, and, if so, the reasons for and details of the arrangement;
 - j) Whether any payments are to be made to or by third parties, and, if so, the reasons for and details of the arrangement; and
 - k) Any issues that arose in relation to the trust prior to an RFI's take-over from a previous trustee.

Source of wealth and source of funds

- I.72 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 for suspicion that funds or assets are criminal property, or that a person is involved in ML/TF.
- I.73 RFIs 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 trust business relationship or transaction.
- I.74 The extent of such enquiries to understand and determine the legitimacy of a customer's source of wealth and source of funds should be made using a risk-based

approach.

- I.75 RFI should also 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.
- I.76 Additional information on source of funds and source of wealth is set forth in paragraphs 5.110 through 5.113 of the general GN.

Definition of customer in a trust business context

- I.77 An RFI's customer is generally a private natural person, legal person, trust or other legal arrangement with or for whom a business relationship is established, or with or for whom an occasional transaction is carried out. A given trust business relationship or transaction may have more than one person who is a customer.
- I.78 A customer that is not a private natural person generally involves a number of natural persons, 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 entity or arrangement itself, but also the natural persons who comprise the entity or arrangement and its relationship with the RFI.
- I.79 For the purposes of these SSGN, a customer includes each of the following:
- a) Each private natural person, legal person, trust or other legal arrangement that is or comprises a customer seeking a trust business product or service; and
 - b) Each beneficial owner of a customer.
- I.80 In the context of trust business and business involving similar legal arrangements, the trust customer most often has no legal personality. Instead, the trust customer involves a number of persons, such as settlors, beneficiaries, trustees, co-trustees, third-party controllers (e.g., enforcers, promoters or protectors), and any other persons connected with the trust. Persons connected with the trust should be understood to include other regulated agents of, and service providers to, the trust, including investment advisors and managers, lawyers, legal advisors, accountants and tax advisors. An RFI must, therefore, identify not only the trust itself, but also the persons who are party to the trust and its relationship with the RFI.
- I.81 The persons connected with a trust, and who are, therefore, customers, may change at different points in time, such as at the time:
- a) The trust is executed;
 - b) Any additional assets are contributed to, or distributed from, the trust;
 - c) Of any addition, removal or change in status, rights or powers of any settlor, beneficiary, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), or any other person connected with the trust; and
 - d) An RFI becomes an additional or replacement trustee of an existing trust.

- I.82 At a minimum, RFIs must treat the settlor(s) and trustee(s) as trust customers. RFIs must also treat any “effective” settlor, whether an actual settlor, as a customer.
- I.83 In addition, where required due to the structure of the trust or an RFI’s ML/TF risk assessment, RFIs must treat any co-trustees, third-party controllers (e.g., enforcers, promoters or protectors), and any other persons connected with the trust as trust customers.
- I.84 RFIs should note that persons meeting any of the definitions of beneficial owner in paragraphs I.86 through I.112 below are also subject to CDD.
- I.85 Full information on the meaning of customer, business relationship and occasional transaction and on identifying and verifying natural persons, legal persons, trusts and other legal arrangements is set forth in **Chapter 4: Standard Customer Due Diligence Measures**.

Definition of beneficial owner in a trust business context

- I.86 Irrespective of the geographic location of a customer, the complexity of a customer’s structure or the means by which any business relationship is initiated, RFIs must know the identity of the persons who effectively own and control a customer.
- I.87 POCR Regulation 3(3) defines the beneficial owner(s) of a trust as:
- a) Any natural person who is entitled to a specified interest in the trust property;
 - b) As respects any trust other than one which is set up or operates entirely for the benefit of natural persons falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;
 - c) Any natural person who has control over the trust; and
 - d) The settlor of the trust.
- I.88 RFIs should be aware that a natural person may fall under POCR Regulation 3(3) due to their position within, or relationship with, a legal person or legal arrangement.
- I.89 Where a legal person, trust or other legal arrangement is a settlor, beneficiary, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), or any other person connected with the trust, RFIs should assess whether any natural person who owns or controls such a legal person or legal arrangement falls under POCR Regulation 3(3).
- I.90 Where control or ownership is held by another legal person or legal arrangement, RFIs should consider each private natural person who ultimately controls or owns that other legal person or legal arrangement to be a beneficial owner.

- I.91 RFI must consider as beneficial owners those persons who own or control a customer or its management, directly or indirectly, through any bearer or nominee arrangement.

Specified interest

- I.92 Under POOCR Regulation 3(4), a natural person has a specified interest if the interest is vested and in possession, remainder or reversion. A specified interest may be either defeasible or indefeasible.
- I.93 A *condition precedent* is a provision in a trust instrument that prevents the vesting of an interest until an event or state of affairs occurs or fails to occur.
- I.94 A *condition subsequent* is a provision in a trust instrument that brings an end to an interest or power due to the occurrence or non-occurrence of an event or state of affairs.
- I.95 A beneficiary has a *defeasible interest* where, without the consent of the beneficiary, the interest can be terminated in whole or in part by the occurrence of an event, such as the failure of a condition subsequent or a trustee's exercise of a power to terminate or vary the interest.
- I.96 A beneficiary has an *indefeasible interest* where, without the consent of the beneficiary, the interest cannot be terminated in whole or in part by the occurrence or non-occurrence of an event or state of affairs.
- I.97 A beneficiary has an *interest in possession* where the beneficiary has the right to enjoy the use or possession of the trust property. An interest in possession of a fund may relate either to an interest in the capital of the fund, or in the income of the fund.
- I.98 A beneficiary has an *interest in remainder* where the beneficiary will have the right to enjoy the use or possession of the trust property only after the termination of one or more prior interests in possession. An interest in remainder of a fund may relate, for example, to an interest in the capital of the fund that will become possessory only after the termination of all prior interests in the income of the fund.
- I.99 A settlor has an *interest in reversion* where the settlor will receive any part of the fund at the end of a trust, including but limited to situations where the trust fails and there are no beneficiaries with an interest in remainder.
- I.100 A beneficiary has a *vested interest* where the interest is not subject to any condition precedent. A vested interest may be under the control of a trustee, but it may not be taken away by a third party.

Class of persons to benefit

- I.101 POCR Regulation 3(3)(b) applies to any trust that includes persons who do not fall under POCR Regulation 3(3)(a).
- I.102 Beneficiaries or objects of discretionary trusts fall under POCR Regulation 3(3)(b).
- I.103 The identification of a class of beneficiaries is generally done using a description, for example:
- a) The children and remoter issue of X;
 - b) The grandchildren of X;
 - c) Charity X;
 - d) The employees of company X;
 - e) Pension holders and their dependents; or
 - f) Unit holders.

Control over the trust

- I.104 POCR Regulation 3(4) sets forth the meaning of control over a trust. Control is a power under the trust instrument, or by law, that may be exercised:
- a) Alone;
 - b) Jointly with another person; or
 - c) With the consent of another person to do any of the following:
 - i. Dispose of, advance, lend, invest, pay or apply trust property;
 - ii. Vary the trust;
 - iii. Add or remove a person as a beneficiary or to or from a class of beneficiaries;
 - iv. Appoint or remove trustees; and/or
 - v. Direct, withhold consent to or veto the exercise of a power such as any of those mentioned above.
- I.105 RFIs should understand references in the general GN to “trustees or equivalent persons” to refer to persons exercising control over a trust or other legal arrangement.
- I.106 Trustees and co-trustees, whether licensed or not, have prima facie control over a trust. Where an RFI maintains trust records for any licensed or unlicensed trustee, the RFI should treat the trustee as a customer. Where an RFI is a co-trustee, it should treat any other licensed or unlicensed co-trustee as a customer.
- I.107 Additional persons who may have control over a trust include, but are not limited to, any settlor, beneficiary, third-party controller (e.g., enforcer, promoter or protector), and any other person connected with the trust, including other regulated agents of, and service providers to, the trust (e.g., investment advisors and managers, lawyers, legal advisors, accountants and tax advisors).
- I.108 POCR Regulation 3(5)(b) specifically provides that control cannot be solely as a

result of:

- a) A natural person's consent being required in accordance with section 24(1)(c) of the Trustee Act 1975 (power of advancement); or
- b) The power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust.

I.109 Where the situations described in POCR Regulation 3(5)(b) arise, the persons involved may be beneficiaries under the terms of POCR Regulation 3(3)(a) and (b). RFIs should treat them accordingly.

I.110 Under POCR Regulation 3(6), where a legal entity or arrangement does not fall within the above-described categories, the term "beneficial owner" means:

- a) where the natural persons who benefit from the entity or arrangement have been determined, any natural person who benefits from at least 25% of the property of the entity or arrangement;
- b) where the natural persons who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates; and
- c) any natural person who exercises control over at least 25% of the property of the entity or arrangement.

I.111 Information on the identification and verification of beneficial owners is set forth in POCR Regulation 3 and **Chapter 4: Standard Customer Due Diligence Measures**.

I.112 Additional information specific to the beneficial ownership of trusts is set forth in POCR Regulation 3.

Obtaining and verifying customer identification information

I.113 RFIs must obtain the following identification information in relation to each customer involving a trust or other legal arrangement:

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

I.114 RFIs must verify the following in relation to each trust or legal arrangement:

- a) Full name of the trust or other legal arrangement;
 - b) Date and place of establishment;
 - c) Legal form, nature and purpose (e.g., discretionary, testamentary, bare);
 - d) Control and ownership structures;
 - e) Official identification number (where applicable); and
 - f) Subject to paragraphs 4.118 and 4.119 of the general GN, the identity of all trustees and equivalent persons controlling or having power to direct the activities of the trust or other legal arrangement.
- I.115 RFI must obtain and verify identification information for each person who is a customer in the trust business context.
- I.116 A person who is a customer in the trust business context may be a natural person, a legal person, a 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.
- I.117 RFIs conducting trust business should seek to obtain and verify the identity of the natural persons who ultimately control and own any trust customer that is a legal person, another trust or another type of legal arrangement.
- I.118 Using a risk-based approach, and in line with the general GN, RFIs conducting trust business must identify but may elect not to verify selected service providers to the trust (e.g., investment advisors or managers, lawyers, legal advisors, accountants or tax advisors).

Obtaining and verifying beneficial owner information

- I.119 RFIs conducting trust business must obtain and verify identification information, in line with the guidance for private persons and, where relevant, legal persons for all known beneficiaries:
- I.120 A beneficiary is known if the beneficiary can be identified from the terms of the trust instruments.
- I.121 Where a trust is discretionary, and a large number of beneficiaries are named in the trust instrument, an RFI must obtain and verify identification information for:
- a) The settlor or similar person(s);
 - b) The trustee and any co-trustees;
 - c) Any third-party controller (e.g., enforcer, promoter or protector), and any other person connected with the trust;
 - d) The named beneficiaries; and
 - e) Any beneficiary prior to making any distribution.
- I.122 The beneficiaries of a trust may include one or more natural persons or classes of

persons. In such cases, RFIs should obtain and verify the identity of any natural persons and should treat the remaining beneficiaries as one or more classes.

- I.123 Where the beneficiaries of a trust are one or more classes, an RFI must take reasonable steps to ascertain the identity of the members of each class or each part of a class that is most likely to receive trust property in the foreseeable future.
- I.124 Where a newly created trust benefits, for example, the children of X, there is only one class for which an RFI must obtain and verify identity. The RFI must:
- a) Identify and verify each settlor, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), and any other person connected with the trust;
 - b) Identify the children of X; and
 - c) Subsequently verify the identity of the children of X prior to allowing the exercise of any vested interest.
- I.125 Where a newly created trust benefits, for example, the adult children of X, and after their deaths, the adult grandchildren of X, and after their deaths, a charity, the children of X are the class most likely to receive trust property in the foreseeable future. The RFI must:
- a) Identify and verify each settlor, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), and any other person connected with the trust;
 - b) Identify the children of X; and
 - c) Subsequently verify the identity of each member of each class prior to allowing the exercise of any vested interest.
- I.126 Where a newly created trust benefits, for example, the spouse of X, the adult children of X, their spouses and civil partners, the adult grandchildren of X, and their spouses and civil partners, the classes most likely to receive trust property in the foreseeable future are the spouse, the adult children, and their spouses and civil partners. The RFI must:
- a) Identify and verify each settlor, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), and any other person connected with the trust;
 - b) Identify the spouse of X, any adult children of X, and any of their spouses and partners; and
 - c) Subsequently verify the identity of each member of each class prior to allowing the exercise of any vested interest.
- I.127 RFIs should have regard to paragraphs I.62 and I.110 and ensure that any trust structure, including through the use of any legal person, trust or other legal arrangement, does not permit any true beneficial owner to fall outside of the scope

of POOCR Regulation 3 such that any true beneficial owners is not identified and verified.

- I.128 Where a customer is an agent acting on behalf of a principal, 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.
- I.129 Additional information on identifying and verifying trust beneficiaries is set forth in **Chapter 4: Standard Customer Due Diligence Measures**.

Timing of customer due diligence

- I.130 An RFI must apply CDD measures when it:
- a) Establishes a business relationship;
 - b) Carries out an occasional transaction in an amount of \$15,000 or more, whether the transaction is carried out in a single operation or several operations which appear to be linked, or carries out any wire transfer in an amount of \$1,000 or more (see **Chapter 8: Wire Transfers**);
 - c) Suspects ML/TF; or
 - d) Doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.
- I.131 Where the product or service is a one-off transaction amounting to less than \$15,000, for example, the formation of a trust but no further services are required that would involve an ongoing business relationship with the customer, then, in line with the RFI's risk assessment, verification of identity may not be necessary.
- I.132 However, 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 that it is entering into a business relationship requiring CDD measures.
- I.133 Without exception, RFIs conducting trust business should always identify the customer, the relevant persons comprising the customer, beneficial owners, persons exercising significant control, the nature of the customer's business, the purpose and intended nature of the business relationship, and the source of wealth and source of funds before the establishment of a business relationship or the carrying out of an occasional transaction.
- I.134 Under Section 12 of the Code of Practice made pursuant to Section 7 of the Trusts Act, RFIs conducting trust business must have procedures in place to ensure that proper, risk-based due diligence is carried out before a decision is made to act for any new client.
- I.135 Verification should take place:

- a) Before the RFI establishes a new business relationship or, in limited circumstances where essential to avoid interrupting normal conduct of business, during the establishment of a new business relationship;
- b) Before the RFI provides any service as part of a business relationship or occasional transaction;
- c) Before the RFI allows the exercise of any power or control;
- d) When a new party becomes entitled to exercise power or control; and
- e) 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.

I.136 With specific regard to trust business, verification should ordinarily take place:

- a) Before the trust is executed;
- b) Before the RFI is appointed in place of a retiring trustee;
- c) Before the RFI becomes co-trustee;
- d) Before the RFI is appointed to act as protector or enforcer;
- e) Before the RFI agrees to maintain trust records;
- f) Before any distribution is made out of the trust and before allowing the exercise of any other vested interest;
- g) Before a new beneficiary or class of beneficiaries is added;
- h) When a new party becomes entitled to exercise control; and
- i) Subsequently, when there is any change in information previously provided, or when otherwise deemed necessary due to information obtained through ongoing monitoring.

I.137 RFIs conducting trust business should also have regard to the timing provisions set forth in paragraph 3.18.

I.138 Each time a new or existing customer adds assets to the property of a trust, the RFI should obtain and verify the source of the assets and the objectives of the settlor.

I.139 In order to keep aging identity information accurate and up to date, RFIs should take advantage of opportunities to obtain updated documentation. Such opportunities include, but are not limited to:

- a) A change in a settlor's, trustee's or beneficiary's residential address;
- b) A change in the settlor's business address;
- c) The appointment of a new co-trustee;
- d) The appointment of a new protector or enforcer;
- e) The expiration of a document establishing identity;
- f) The addition or exclusion of beneficiaries;
- g) Any addition or change in status, rights or powers of any settlor, beneficiary, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), or any other person connected with the trust; and
- h) An RFI becoming an additional or replacement trustee of an existing trust.

- I.140 Detailed information on the timing of CDD measures is set forth in **Chapter 3: Overview of Customer Due Diligence.**

Previous due diligence and reliance on third parties

- I.141 Paragraphs 5.117 through 5.148 set forth the circumstances in which reliance on a third party is permissible. Paragraphs 3.23 through 3.25 provide additional relevant guidance. In any reliance situation, however, the relying RFI retains responsibility for any failure to comply with a requirement of the POOCR, as this responsibility cannot be delegated.
- I.142 Before an RFI conducting trust business can rely on CDD conducted by a third party, the RFI must determine whether the third party carried out at least the standard level of customer verification.
- I.143 RFIs may rely upon another person or institution to carry out CDD measures only when the person or institution being relied upon confirms in writing that the measures have actually been applied. A Bermudian RFI or a non-Bermudian entity conducting business corresponding to the business of a Bermudian RFI that has relied upon another person to apply certain CDD measures may not “pass on” verification to a third institution.
- I.144 An RFI that is an additional or successor trustee should enquire of the existing or predecessor trustee(s) whether appropriate enquiries were made of the settlor or settlors at the time the trust was created, and at the time any assets were added to the trust.
- I.145 An RFI that is an additional or successor trustee should obtain sight of and retain record of the original due diligence documentation.
- I.146 Where an RFI determines that the information it has received is adequate, and all other criteria for relying upon a third party have been met, the RFI may determine that it has satisfied its CDD obligations.
- I.147 Where, however, an RFI determines that relevant documentation is not available, or is inadequate, the RFI must seek additional documentation.
- I.148 Where the settlor is still living, the RFI should obtain the relevant documentation from the settlor(s). Where a trust was made by a declaration of trust and no settlor is named on the face of the deed, the RFI should determine who contributed the assets and obtain the relevant documentation from that person. Where there was a corporate settlor, CDD should also be conducted on the corporate entity, and on any natural person asset contributor.
- I.149 Where the settlor is deceased, or where a corporate settlor is no longer in existence, the RFI should make reasonable enquiries about the settlor of such persons as may

be appropriate in the circumstances. Potential sources of information include the existing or predecessor trustees or the beneficiaries.

- I.150 Where the beneficiaries are relatives of a deceased settlor, appropriate enquiry of the oldest beneficiaries may be the most fruitful. Where a settlor is deceased, the RFI should obtain a copy of the death certificate and conduct CDD on the other persons connected with the trust.

Refusing or terminating trust business

- I.151 If, for any reason, an RFI is unable to complete CDD measures in relation to a customer, POCR Regulation 9 establishes that the RFI must:

- a) In the case of a proposed business relationship or transaction, not establish that business relationship, not open any account and not carry out any transaction with or on behalf of the customer;
- b) In the case of an existing business relationship, terminate that business relationship with the customer; and
- c) Consider whether the RFI is required to make a Suspicious Activity Report to the FIA, in accordance with its obligations under POCA and ATFA.

- I.152 Where an RFI conducting trust business decides that a business relationship must be terminated due to an inability to complete CDD, the RFI must take appropriate steps to stop acting as trustee or other relevant person of the trust or, as appropriate, not proceed with any proposed act, account, service, transaction or representation, including but not limited to any proposed distribution, exercise of a vested right or other trustee service (e.g., changing beneficiaries, varying the trust to grant powers to a new person). Where there are no grounds for filing a Suspicious Activity Report, any customer funds should be returned to the customer by bank transfer, wherever possible, into the customer's bank account from which the RFI originally received the funds.

- I.153 Because there may be legal ramifications for exiting the trust relationship, the RFI may decide to:

- a) Communicate with the settlor, beneficiaries and any other relevant persons about terminating the relationship;
- b) Ask the natural person(s) or person(s) with control, for example, the protector or enforcer, to remove the RFI as trustee and to appoint a successor trustee;
- c) Resign as trustee; or
- d) Apply to the court to be removed.

- I.154 Where an RFI is unable to apply CDD on the relevant persons, wherever possible, the RFI should resign its trusteeship.

- I.155 Nevertheless, an RFI conducting trust business may be a fiduciary and the terms of the trust instrument, legislation and common law principles may limit its ability

to resign without a continuing or successor trustee being in place.

- I.156 In addition, where one beneficiary fails to comply with a request for information, while the remaining beneficiaries comply, there may be no need to cease acting as trustee. In such situations, the RFI may not need to resign its trusteeship immediately, but may postpone providing any service in relation to that uncooperative beneficiary or, as appropriate, the whole trust, until all required CDD is carried out.
- I.157 Where a licensed undertaking is unable to complete CDD and decides to resign as trustee or postpone providing a service as trustee, the licensed undertaking should consider whether it is required to make a Suspicious Activity Report to the FIA.
- I.158 Where an RFI declines or terminates business due to knowledge, suspicion or reasonable grounds for suspicion that the business might be criminal in intent or origin, the RFI must refrain from referring such declined business to another person.

Customer transactions or relationships involving cash or bearer instruments

- I.159 In the context of trust business, RFIs should limit the acceptance or delivery of cash or other bearer negotiable stores of value to de minimus amounts. In extremely rare circumstances where this guidance is not followed, an RFI should be prepared to demonstrate that it has determined and applied appropriate risk-mitigation measures, and documented relevant policies, procedures and controls applicable to its business and the particular customer. Any cash or bearer instrument transaction that is not of a de minimus amount should be reported to the RFI's reporting officer.
- I.160 Paragraph 7.14 of the general GN states that each RFI should establish norms for cash transactions and procedures for the identification of unusual cash transactions or proposed cash transactions.
- I.161 Paragraphs 4.99 through 4.103 of the general GN provide additional guidance on the use of bearer instruments.

Applicability of simplified due diligence to trust business

- I.162 Simplified due diligence involves the application of reduced or simplified CDD measures in specified circumstances.
- I.163 RFIs may consider applying reduced or simplified due diligence measures only in conformance with the acts, regulations and paragraphs 5.1 through 5.13 of the general GN and where:
- a) The RFI has taken into account the results of Bermuda's national risk assessment;

- b) The RFI has conducted and documented a risk assessment providing the RFI with reasonable grounds for believing that there is a low risk of ML/TF; and
- c) The RFI has no knowledge, suspicion or reasonable grounds for suspicion of ML/TF.

I.164 As noted in paragraph I.46, the level of risk associated with trust business is generally higher than that associated with standard retail banking. As a consequence, an RFI conducting trust business may apply simplified due diligence only in limited situations, including identifying and verifying:

- a) Companies listed on an appointed stock exchange (see paragraphs 4.97 through 4.98 of the general GN); and
- b) Employee pension schemes (see paragraphs 4.138 through 4.143 of the general GN).

I.165 Where a customer 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 and its business relationship with the RFI.

I.166 Detailed information on the applicability of simplified due diligence is set forth in paragraphs 5.1 through 5.13 of the general GN.

Enhanced due diligence for trust business

I.167 Enhanced due diligence is the application of additional CDD measures, where necessary, to ensure that the measures in place are commensurate with higher ML/TF risks.

I.168 POOCR Regulation 11 requires RFIs to apply enhanced due diligence in all situations where a customer or business relationship, or any country or geographic area, service, delivery channel, product or transaction with which the customer engages or the business relationship is involved, presents a higher than standard risk of ML, corruption, TF or being subject to international sanctions.

I.169 In addition, enhanced due diligence must be applied in each of the following circumstances:

- a) The business relationship or occasional transaction has a connection with a country or territory that represents a higher risk of ML, corruption, TF or being subject to international sanctions, including but not limited to any country that has been identified as having a higher risk by the FATF or the CFATF (see paragraphs 5.18 through 5.19 of the general GN);
- b) The customer or beneficial owner has not been physically present for identification purposes (see paragraph 5.25 through 5.29 of the general GN); and
- c) The business relationship or occasional transaction involves a PEP (see

paragraphs 5.96 through 5.116 of the general GN).

- I.170 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 ML/TF.
- I.171 In selecting the appropriate additional measures to be applied, RFIs should consider obtaining additional information and approvals, including one or more of the following:
- a) Additional information on the customer, such as the persons that comprise, own and control the customer, volume of assets and information available through public databases;
 - b) Additional information on the nature of the customer's business and the nature and purpose of the business relationship (see paragraphs 4.1 through 4.4 of the general GN);
 - c) Additional information on the source of wealth and source of funds of the customer (see paragraphs 5.110 through 5.113 of the general GN);
 - d) Additional information on the reasons for planned or completed transactions; and
 - e) Approval of the RFI's senior management to commence or continue the business relationship (see paragraph 5.109 of the general GN).
- I.172 In addition, RFIs should consider applying additional measures, such as:
- a) Updating more frequently the identification and verification data for the customer, its beneficial owner(s), and any other persons who own or may exercise control over the customer, or who may instruct the RFI on behalf of the customer;
 - b) Conducting enhanced monitoring of the business relationship by increasing the number and frequency of controls applied and by identifying patterns of activity requiring further examination; and
 - c) Requiring the first payment to be carried out through an account in the customer's name via an RFI subject to the POOCR, or via an institution that is situated in a country or territory other than Bermuda that imposes requirements equivalent to those in Bermuda, that effectively implements those requirements, and that is supervised for effective compliance with those requirements.
- I.173 Detailed information on enhanced due diligence is set forth in **Chapter 5: Non-Standard Customer Due Diligence Measures**. Detailed information on due diligence involving PEPs, as defined in POOCR Regulation 11, is set forth in paragraphs 5.96 through 5.116 of the general GN.
- I.174 Specific indicators of higher risk in trust business are discussed in greater detail in paragraphs I.227 through I.233.

International sanctions

- I.175 RFI's conducting trust business should implement a sanctions compliance programme in line with the guidance set forth in **Chapter 6: International Sanctions**.
- I.176 RFI's should have in place processes for screening against sanctions list customers, prospective customers and any third-party intermediaries seeking to introduce new business, and for performing background checks to identify information about a customer's association with financial or other crime, or with PEPs.
- I.177 RFI's should determine whether any persons connected with a customer, and the natural persons connected with any such persons that are legal entities, trusts or other legal arrangements, are sanctions targets.
- I.178 RFI's must be aware that, in contrast to AML/ATF measures, which permit trust business some flexibility in setting their own timetables for verifying (see POOCR Regulation 8) and updating CDD information (see POOCR Regulations 6(2) and 7(2)(c)), an RFI risks breaching a sanctions obligation as soon as a person, entity, good, service or activity is listed under a sanctions regime in effect in Bermuda. In addition, whereas an RFI may choose to transact with a higher-risk natural person or entity, it may not transact with any natural person or entity subject to the Bermuda sanctions regime without first ensuring that an appropriate licence is in effect.

Ongoing monitoring

- I.179 POOCR Regulations 6(3), 6(3A), 7, 11(4)(c), 12(1)(b), 13(4), 14(A)(2)(d), 16 and 18 require RFI's to conduct ongoing monitoring of the business relationship with their customers.
- I.180 Ongoing monitoring in the context of trust business supports several objectives:
- a) Maintaining a proper understanding of a customer's owners, controllers and activities;
 - b) Ensuring that CDD documents and other records are accurate and up to date;
 - c) Providing accurate inputs for the RFI's ongoing risk assessment processes;
 - d) Testing the outcomes of the RFI's ongoing risk assessment processes; and
 - e) Detecting and scrutinising unusual or suspicious conduct in relation to a customer.
- I.181 RFI's conducting trust business should have adequate policies and procedures in place to confirm that they know on an ongoing basis the current identity of each director, partner or officer and the current identity of all the persons who own and control the entities under administration, including signatories, trustees, settlors, beneficiaries and signatories.

- I.182 Failure to adequately monitor a customer's business relationship could expose an RFI to abuse by criminals and may call into question the adequacy of the RFI's AML/ATF policies, procedures and controls and the integrity or fitness and properness of the RFI's management.
- I.183 Ongoing monitoring of a business relationship includes:
- a) Employing the RFI's professional experience and judgement in the formulation of suspicions, where appropriate;
 - b) Scrutinising transactions undertaken throughout the course of the relationship (including, where necessary, the source of wealth and/or source of funds) and other aspects of the business relationship to ensure that the transactions and customer's conduct are consistent with the RFI's knowledge of the customer, the customer profile and the persons who own, control and act on behalf of the customer;
 - c) Investigating the background and purpose of all complex or unusually large transactions, patterns of transactions that have no apparent economic or lawful purpose, and unusual corporate or other legal structures;
 - d) When handling customer funds or accounts in a fiduciary capacity, monitoring the frequency and size of customer transactions or funds transfers to detect turnover that is out of line with the customer's declared profile;
 - e) Recording in writing the findings of monitoring and investigations;
 - f) Determining whether a customer or person connected with a customer is a PEP and whether a customer relationship involves a country that represents a higher risk for ML, corruption, TF or being subject to international sanctions, including but not limited to a country that has been identified by the FATF or CFATF as being higher-risk;
 - g) Reviewing existing documents, data and information to ensure that they are accurate, up to date, adequate and relevant for the purpose of applying CDD measures in the context of trust business; and
 - h) Adjusting risk profiles and risk assessments on the basis of information reviewed.
- I.184 RFIs conducting trust business, therefore, must ensure that information on the settlors, beneficiaries, trustees, co-trustees, third-party controllers (e.g., enforcers, promoters or protectors), and other persons with a range of rights and responsibilities in relation to a trust, whether natural persons, legal entities or legal arrangements, are known to the RFI, properly recorded, up to date and promptly available for inspection by the BMA and other competent authorities.
- I.185 An RFI should require corporate customers to notify it of any material change to:
- a) The nature of the trust's business and objectives;
 - b) Persons who are settlors, beneficiaries, trustees, co-trustees, third-party controllers (e.g., enforcers, promoters or protectors), and other persons exercising control over management of the trust or its activities;
 - c) Powers or authorities assigned to such persons; and

d) Other changes to the control or ownership structures of the customer.

I.186 It is the RFI's responsibility to maintain current information concerning the above.

I.187 In addition, each time a customer makes a payment into a money account in an amount of \$15,000 or more, whether the payment is carried out in a single operation or several operations that appear to be linked, or otherwise contributes significant value to a business relationship or occasional transaction, an RFI should obtain and verify the source of the funds or value and the objectives of the customer. In such situations, an RFI should determine whether funds received are from known sources on which they have performed CDD, or whether the funds are from third parties, foreign accounts or other unknown sources. RFIs should also determine whether the methods of payment and/or the financial instruments used are consistent with the customer's profile, bearing in mind that the use of cash, cashier's cheques, postal money orders, prepaid cards, third-party cheques, cryptocurrencies or other difficult-to-trace payment methods could disguise the origin of the funds.

I.188 Ongoing monitoring must be carried out on a risk-sensitive basis. The inherent ML/TF risk levels associated with trust business should be taken into account when determining base-line levels of ongoing monitoring. Higher-risk customers and business relationships must be subjected to enhanced due diligence and more frequent and/or intensive ongoing monitoring.

I.189 Bearing in mind that some criminal activity may be so widespread as to appear to be the norm, RFIs should establish norms for lawful transactions and conduct in relation to trust business customers and the persons who own and control those customers. See paragraphs 7.11 through 7.14 of the general GN.

I.190 Once an RFI has established norms for lawful transactions and conduct, it must monitor the business relationship, including transactions, patterns of transactions and conduct by customers and the persons who own, control and act on behalf of those customers to identify transactions and conduct falling outside of the norm.

I.191 The determination of norms for a category of customers or a category of persons who own, control or act on behalf of a customer should be based initially upon the information obtained in order to understand the nature of the customer's business and the purpose and intended nature of the business relationship with the RFI. See paragraph I.69.

I.192 Monitoring may take place both in real time and after the event, and it may be both manual and automated. Irrespective, any system of monitoring should ensure at its core that:

a) Customers, persons who own, control and act on behalf of customers, transactions and conduct are flagged in exception reports for further examination;

- b) The exception reports are reviewed promptly by the appropriate person(s); and
- c) Appropriate and proportionate action is taken to reduce the possibility of ML/TF occurring without detection.

- I.193 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 persons who own, control and act on behalf of the customer and the business relationship with the RFI. See paragraphs I.53 and I.60.
- I.194 Detailed information on ongoing monitoring is set forth in **Chapter 7: Ongoing Monitoring**.

Suspicious activity reporting

- I.195 The suspicious activity reporting requirements for RFIs are governed primarily by Sections 43 through 48 of POCA, Sections 5 through 12 of ATFA, and Regulations 16 and 17.
- I.196 RFIs conducting trust business must put in place appropriate policies and procedures to ensure that knowledge, suspicion and reasonable grounds for suspicion that funds or assets are criminal property, or that a person is involved in ML/TF, are identified, enquired into, documented and promptly reported.
- I.197 The definitions of knowledge, suspicion and reasonable grounds for suspicion are set forth in paragraphs 9.7 through 9.13 of the general GN.
- I.198 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 or as providing reasonable grounds for suspicion, but should cause the RFI to conduct further, objective enquiries to determine whether or not the transaction or conduct is indeed suspicious or provides reasonable grounds for suspicion.
- I.199 Enquiries into unusual transactions should be in the form of additional CDD measures to ensure an adequate, gap-free understanding of the relationship, including the purpose and nature of the transaction and/or conduct in question and the identity of the persons who initiate or benefit from the transaction and/or conduct.
- I.200 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 for suspicion that funds or assets are criminal property or that a person is involved in ML/TF.
- I.201 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 for suspicion that funds or assets are criminal property or that

a person is involved in ML/TF.

- I.202 Where, after evaluating an internal suspicious activity report, the reporting officer determines that there is knowledge, suspicion or reasonable grounds for suspicion that funds or assets are criminal property or that a person is involved in ML/TF, the reporting officer must promptly file an external Suspicious Activity Report with the FIA.
- I.203 The FIA no longer accepts any manually submitted Suspicious Activity Reports (including those faxed or e-mailed). The FIA accepts only those Suspicious Activity Reports that are submitted electronically via the goAML system, which is available at www.fia.bm.
- I.204 Where a reporting officer considers that an external report should be made urgently, initial notification to the FIA may be made by telephone, but must be followed up promptly by a full Suspicious Activity Report.
- I.205 The FIA is located at 6th Floor, Strata 'G' Building, 30A Church Street, Hamilton HM11, and it can be contacted during office hours on telephone number (441) 292-3422, on fax number (441) 296-3422, or by e-mail at info@fia.bm.

Failure to report and tipping-off offenses

- I.206 Where an employee fails to comply with the obligations under Section 46 of POCA or Schedule 1 of ATFA to make disclosures to a reporting officer and/or to the FIA promptly after information giving rise to knowledge, suspicion or reasonable grounds for suspicion comes to the attention of the employee, the employee is liable to criminal prosecution.
- I.207 The criminal sanction, under POCA and ATFA, for failure to report is a prison term of up to three years on summary conviction or ten years on conviction on indictment, a fine up to an unlimited amount or both.
- I.208 Sections 20A through 20I of POCA SEA grant the BMA other enforcement powers when it considers that an RFI has contravened a requirement imposed on it, including the requirement to report suspicious activity. Those other enforcement powers include the following powers to:
- a) Issue directives;
 - b) Restrict an RFI's licence;
 - c) Revoke an RFI's licence;
 - d) Publicly censure a person;
 - e) Prohibit a natural person from performing functions in relation to an AML/ATF regulated activity; and
 - f) Wind up or dissolve a company or firm that is or has been a licensed entity.
- I.209 Section 20H of the POCA SEA grants the court the authority to enter an injunction

where there is a reasonable likelihood that any person will contravene a requirement under the POCR or any direction or licence condition imposed by the BMA.

- I.210 In addition, Section 4 of the Statement of Principles & Guidance on the Exercise of Enforcement Powers (BMA - September 2018) states that the following enforcement options are available to the BMA:
- a) Imposition of a civil penalty;
 - b) Objections to controllers;
 - c) Cancellation of registration; and
 - d) Referral to the Police.
- I.211 Section 47 of POCA and Section 10A of ATFA contain tipping-off offences.
- I.212 It is a tipping-off offence under Section 47 of POCA and Section 10 of ATFA if a person knows, suspects or has reasonable grounds to suspect that an internal or external report has been made to the reporting officer or to the FIA and the person discloses to any other person:
- a) Knowledge or suspicion that a report has been made; and/or
 - b) Information or any other matter likely to prejudice any investigation that might be conducted following such a disclosure.
- I.213 It is also a tipping-off offence if a person knows, suspects or has reasonable grounds to suspect that a police officer is acting, or proposing to act, in connection with an actual or proposed investigation of ML/TF and the person discloses to any other person information or any other matter likely to prejudice the actual or proposed investigation.
- I.214 Any RFI investigation into a customer or a customer's activities, and any approach to the customer or to an introducing intermediary should be made with due regard to the risk of committing a tipping-off offence. See paragraphs 9.82 through 9.88 of the general GN.
- I.215 Detailed information on suspicious activity reporting, including related offenses and constructive trusts is set forth in **Chapter 9: Suspicious Activity Reporting**.

Employee training and awareness

- I.216 The responsibilities of RFIs to ensure appropriate employee training and awareness are governed primarily by POCR Regulations 16 and 18.
- I.217 RFIs must take appropriate measures to ensure that relevant employees:
- a) Are aware of the acts and regulations relating to ML/TF;
 - b) Undergo periodic training on how to identify transactions or conduct that may

be related to ML/TF; and

- c) Know how to properly report knowledge, suspicion and reasonable grounds for suspicion that a transaction or conduct may be related to ML/TF.

I.218 Each RFI must also ensure that relevant employees receive appropriate training on its AML/ATF policies and procedures relating to:

- a) Risk assessment and management;
- b) CDD measures;
- c) Ongoing monitoring;
- d) Record-keeping;
- e) Internal controls;
- f) International sanctions (see paragraphs 6.52 through 6.54 of the general GN).

I.219 In a trust business context, training should enable relevant employees to:

- a) Readily identify trust structures and other vehicles that may be structured for ML/TF purposes;
- b) Understand how proposed trust business work could obscure or facilitate the movement of proceeds of crime and determine whether the RFI has the expertise to effectively manage the risks associated with the proposed trust business work;
- c) Understand how beneficial owners are defined under the acts and regulations and be capable of identifying those persons and verifying their identity;
- d) Identify and verify source of wealth and source of funds information;
- e) Effectively vet both customers and the persons who own them, control them and act on their behalf;
- f) Identify falsified documents;
- g) Assess the risks associated with a customer and its business relationship with the RFI;
- h) Conduct ongoing monitoring of the customer and its business relationship with the RFI, including identifying indicators of suspicious activity; and
- i) Recognise and report transactions or conduct where there is knowledge, suspicion or reasonable grounds for suspicion of ML/TF.

I.220 Where an employee exercises discretion for or in relation to a customer, the RFI must ensure that the employee 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. Training may supplement the requisite level of knowledge and experience, but likely cannot adequately replace it.

I.221 RFIs should recognise that, often, multiple ML/TF typologies and techniques are used in a single transaction or in a series of related transactions. RFIs should, therefore, be alert to indicators of potentially suspicious transactions from all categories of typology or technique. RFIs should also incorporate the regular review of ML/TF trends and typologies into their employment screening and

compliance training programmes, as well as into their risk identification and assessment procedures. Information on trends, typologies and techniques is available from a wide variety of publicly available sources, including, but not limited to, FATF and CFATF publications.

- I.222 Detailed information on employee training and awareness is set forth in **Chapter 10: Employee Training and Awareness**.

Record-keeping

- I.223 The record-keeping obligations of RFIs are governed primarily by POOCR Regulations 15 and 16. As noted in I.184, RFIs conducting trust business, therefore, must ensure that information on the settlors, beneficiaries, trustees, co-trustees, third-party controllers (e.g., enforcers, promoters or protectors), and other persons with a range of rights and responsibilities in relation to a trust, whether natural persons, legal entities or legal arrangements, are known to the RFI, properly recorded, up to date and promptly available for inspection by the BMA and other competent authorities.
- I.224 Under POOCR Regulation 16(4), each RFI must have systems in place enabling it to respond promptly to enquiries from a supervisory authority, the FIA or a police officer, about whether the RFI maintains, or has maintained during the previous five years, a business relationship with any person, and the nature of that relationship.
- I.225 RFIs must keep specified records for a period of at least five years following the date on which the business relationship ends, or, in the case of an occasional transaction, following the date on which the transaction, or the last in a series of transactions, is completed.
- I.226 Detailed information on the records that must be kept is set forth in **Chapter 11: Record-Keeping**.

Risk factors for trust business

- I.227 In addition to the non-exhaustive list of risk factors set forth in paragraph 2.37 of the general GN, RFIs conducting trust business should consider sector-specific risk factors, including those in paragraphs I.228 through I.233 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 and business relationships, countries and geographic areas, products and services, transactions, delivery channels and third-party service providers.
- I.228 Customer and business relationship risk factors include, but are not limited to:
- a) The appointment of parties as co-trustees with little or no commercial involvement;

- b) The use of a dummy settlor who, on behalf of the instigator or actual settlor, attempts to settle property into the trust for the purpose of concealing the identity of the actual settlor;
- c) Requests for a licensed undertaking to make a declaration of trust with no settlor apparent on the face of the deed. (This is not uncommon, particularly in commercial trust structures, but RFIs should obtain a rationale);
- d) Any unexplained relationship between a trust's settlor, beneficial owners, controllers, co-trustees and third parties;
- e) The lack of readily apparent connection or relationship between the settlor and the beneficiaries. (The economic nature of a trust is a mechanism for the settlor to benefit a beneficiary. RFIs should ascertain the settlor's reasons for wanting to benefit a beneficiary with whom they seemingly have no connection);
- f) Requests to add settlors, beneficiaries, protectors, promoters or third parties who have no reserved power under the trust and are not exercising a delegated function for the trustee;
- g) Any change in the nature or intended purpose of the trust;
- h) Unclear activities of the trust or a difference in activity from the stated purpose under the trust deed;
- i) Involvement within the trust of a person who appears to be taking instructions from an unknown or inappropriate person;
- j) Unjustified delays in the production of identity documents, underlying company accounts or other requested information;
- k) Requests to maintain trust property in the form of virtual assets for the purpose of preserving anonymity;
- l) Requests to add a third party as a new beneficiary to the trust, particularly where the RFI receives the request as a letter of wishes after the death of the settlor, or after a reasonable period of time following the occurrence of a condition precedent;
- m) Attempts to remove all existing beneficiaries and add new beneficiaries. This may be a legitimate action where, for example, beneficiaries are excluded due to tax inefficiencies or changes in citizenship. However, the RFI should ensure that any reasons given for such changes are reasonable;
- n) Situations in which it is difficult to identify the natural person beneficiaries of a trust. This includes situations where identification is hindered because the beneficiary of a trust is a legal person or another trust;
- o) Frequent changes to shareholders, directors or trustees of any underlying legal person, trust or other legal arrangement;
- p) The unnecessary or excessive use of nominees;
- q) The unnecessary granting of a power of attorney;
- r) Any use of a blind trust arrangement to make distributions to a natural person who is not named;
- s) The use of opaque or complex legal persons or arrangements where the customer is not open about their purpose;
- t) The unexplained use of any shell and/or shelf company, front company, legal entity with ownership through nominee shares or bearer shares, control through nominee or corporate directors, legal persons or legal arrangements splitting company incorporation and asset administration over different

- countries without any apparent legitimate business, tax, legal or family governance purpose;
- u) The involvement of any settlor, beneficiary, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), or any other person connected with the trust who is a PEP;
 - v) The unexplained use of informal arrangements, such as family or close associates acting as nominee shareholders or directors, without any apparent legitimate business, tax, legal or family governance purpose;
 - w) Settlers or beneficiaries that are higher-risk charities or other not-for-profit organisations not subject to effective supervision and monitoring;
 - x) A trust customer that would be subject to regulation in Bermuda, but is not subject to equivalent regulations in its jurisdiction;
 - y) A client who is unwilling or unable to provide satisfactory information to verify the source of wealth or source of funds;
 - z) Sudden activity from a previously dormant client without a clear explanation;
 - aa) A client request for a transaction in unusually tight or accelerated timeframes without a reasonable explanation, and the acceleration would make it difficult or impossible to perform a proper risk assessment and due diligence;
 - bb) Indicators that a client does not wish to obtain necessary governmental approvals or make required filings;
 - cc) Levels of assets or transactions that exceed what a reasonable person would expect of a customer with a similar profile; and
 - dd) A customer offering to pay extraordinary fees for unusual services, or for services that would not ordinarily warrant such a premium.

I.229 Country and geographic area risk factors include, but are not limited to:

- a) The origin or current location of trust property or trust operations is from or in a high-risk jurisdiction;
- b) A trust that has been established in a high-risk jurisdiction;
- c) A settlor, beneficiary, trustee, co-trustee, third-party controller (e.g., enforcer, promoter or protector), or any other person connected with the trust who is a resident in, or citizen of, a high-risk jurisdiction;
- d) A trust business transaction to or from a high-risk jurisdiction;
- e) A non-face-to-face trust business transaction initiated from a high-risk jurisdiction;
- f) A trust business transaction linked to business in or through a high-risk jurisdiction;
- g) Trust business involving persons or transactions with a material connection to jurisdiction, entity, person or activity that is a target of an applicable international sanction; and
- h) A trust business relationship or transaction for which an RFI's ability to conduct full CDD may be impeded by a jurisdiction's confidentiality, secrecy, privacy or data protection restrictions.

I.230 Products and services risk factors include, but are not limited to:

- a) Situations where advice on the setting up of a legal arrangement may be misused to obscure ownership or real economic purpose, including but not limited to advising in relation to:
 - i. A discretionary trust that gives the trustee discretionary power to name a class of beneficiaries that does not include the real beneficiary (e.g., naming a charity as the sole discretionary beneficiary initially with a view to adding the real beneficiaries at a later stage);
 - ii. A trust set up for the purpose of managing shares in a company with the intention of making it more difficult to determine the beneficiaries of assets managed by the trust;
- b) Services where an RFI may, in practice, represent or assure the client's standing, reputation and credibility to third parties, without a commensurate knowledge of the client's affairs;
- c) Services that are capable of concealing beneficial ownership from competent authorities;
- d) The unexplained and illogical use of corporate structures, express trusts, nominee shares or the use of bearer negotiable instruments;
- e) Any request to include unusual or non-standard clauses in a trust instrument, or to enter into supplementary deeds or agreements, that might indicate that the stated purpose of the trust structure is not the true purpose;
- f) Requests to form or accept business involving a legal arrangement in which a third party, other than the RFI, retains the dispositive power to transfer or dispose of property from the trust without involving the RFI;
- g) A trust structure in which the settlor and beneficiary appear to be different parties on the face of the deed, but through the use of a legal person, trust or other legal arrangement, they are in fact the same natural person and excessive powers are reserved or delegated to that natural person in either capacity;
- h) Requests to create a trust structure or carry out a transaction with undue complexity or with no discernible commercial purpose;
- i) Requests to create a trust structure or carry out a transaction with undue speed, particularly where the settlor or other person associated with the trust requests that any of the due diligence process be completed after the establishment of the trust or after the initiation of a transaction; and
- j) Requests for anonymity. (While a trust customer's requests for their business to be conducted discreetly should not automatically be inferred as illegitimate, requests for anonymity may be indicative of higher risk).

I.231 Transaction risk factors include, but are not limited to:

- a) A trust that, once established, receives sizeable or multiple cash deposits, or deposits from multiple sources, or deposits of precious metals or stones;
- b) Transactions involving gambling, armaments, money service businesses or cash-intensive businesses, or the proceeds of such categories of business;
- c) Large cash transactions in circumstances where such a transaction would normally be made by cheque, banker's draft or wire transfer;
- d) Trust customers requesting transfers to or from overseas locations with instructions for payment to be made in cash;

- e) An attempt by a settlor, trustee or other person connected with a trust to enter into any fraudulent transaction, or to fraudulently evade tax in any relevant jurisdiction;
- f) Sizeable third-party cheques endorsed in favour of the trust or trust customer;
- g) Requests for large payments for unspecified services to consultants, employees or other parties;
- h) Purchase or sale transactions significantly above or below the market price;
- i) Commercial, private or real property transactions or services within a trust operation that have no apparent legitimate business, tax, legal or family governance purpose;
- j) Unusual, complex or uncharacteristically large transactions;
- k) Transactions of a size or volume that exceeds what a reasonable person would expect of a customer with a similar profile, or given the nature and stated purpose of the trust;
- l) Occasional transactions giving rise to suspicion; and
- m) Requests for distributions to be made to PEPs or higher-risk charities or other not-for-profit organisations not subject to effective supervision and monitoring.

I.232 Delivery channel risk factors include, but are not limited to:

- a) Non-face-to-face relationships with trust customers and beneficiaries;
- b) 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
- c) The use of third-party intermediaries, agents or brokers.

I.233 Third party risk factors include, but are not limited to:

- a) The involvement of any third party in carrying out any AML/ATF function in relation to a customer, including reliance upon, or outsourcing to, any third party that has not been sufficiently reviewed for compliance with paragraphs 5.117 through 5.148 (reliance) and 5.149 through 5.174 (outsourcing) of the general GN. This includes any involvement of a third party that would:
 - i. Impede the effective ability of the RFI's senior management to monitor and manage the RFI's compliance functions, including the application of non-standard measures, such as enhanced due diligence;
 - ii. Impede the effective ability of the RFI's board or similarly empowered body or natural person to provide oversight;
 - iii. Impede the effective ability of the appropriate regulator to monitor the RFI's compliance with all obligations under the regulatory system;
 - iv. Reduce the responsibility of the RFI and/or its managers and officers;
 - v. Remove or modify any conditions subject to which the RFI's authorisation was granted; or
 - vi. Increase ML/TF risk in any way that is not adequately addressed through appropriate risk assessment and mitigation;
- b) Any unexplained relationship between a trust's settlor, beneficial owners, controllers, co-trustees and third parties;

- c) Requests to add third parties who have no reserved power under the trust and are not exercising a delegated function for the trustee, such that the trust is undermined;
- d) Requests to add a third party as a new beneficiary to the trust, particularly where the RFI receives the request as a letter of wishes after the death of the settlor, or after a reasonable period of time following the occurrence of a condition precedent;
- e) The use of a third-party intermediary, agent or broker, particularly where such a person would be subject to regulation in Bermuda, but is not subject to equivalent regulation in its jurisdiction; and
- f) Requests to form or accept business involving a legal arrangement in which a third party, other than the RFI, retains the dispositive power to transfer or dispose of property from the trust without involving the RFI.
