



ANGUILLA FINANCIAL SERVICES COMMISSION

GUIDELINES FOR CONDUCTING COMPANY MANAGEMENT BUSINESS DIRECTLY OR THROUGH AN INTERMEDIARY IN COMPLIANCE WITH AML/CFT LEGISLATION

(Issued under Section 61 of the Financial Services Commission Act, R.S.A. c. F28)

Introduction

Section 13 of the Anguilla Anti-Money Laundering and Terrorist Financing Regulations, R.R.A. P98-1 (the “AML/CFT Regulations”) permits Licensees to rely on intermediaries in the circumstances described under Financial Action Task Force (“FATF”) Recommendation 17 (Reliance on Third Parties) (an “Intermediary”) and, as further explained in Appendix 1 to these Guidelines, to perform elements of required customer due diligence measures.

An Intermediary is a person that enters into a business relationship with a Licensee in which it acts for the Intermediary’s customer on whose behalf services are to be provided by the Licensee. The Intermediary, on behalf of the Intermediary’s customer, becomes the customer of the Licensee (see further explanation in Appendix 2). An Intermediary can be distinguished from an introducer, being a person that introduces a customer to the Licensee so that the introduced customer becomes the customer of the Licensee.

These Guidelines present an outline of the customer due diligence measures that the Licensee is expected to apply, both pre-incorporation and post incorporation, in relation to a (1) Company Administered Through an Intermediary (Model 1) and, in comparison, (2) Company Not Administered Through an Intermediary (Model 2). The Models are intended to provide a road map for Licensees to follow. The Models however do not contain the level of detail provided in the Anti-Money Laundering and Terrorist Financing Code, R.R.A. P98-5 (“AML/CFT Code”). **It is strongly recommended that Licensees thoroughly read the AML/CFT Code.**

These Guidelines are not compulsory and are intended to be best practices to follow both in relation to pre-incorporation and post incorporation customer due diligence practices. It remains up to each licensee to determine the extent to which it applies the Guidelines in its particular circumstances.

Model 1 – Company Administered Through an Intermediary¹

1.0 Pre-Incorporation

Prior to incorporating a company (or accepting the transfer of a company from another licensee), the Licensee must apply and document customer due diligence measures in relation to the company and conduct and document a risk assessment of the company.

1.1 *Reliance on an Intermediary*

- 1.1.1 The Licensee can rely on an Intermediary to conduct certain of the due diligence otherwise required to be conducted by the Licensee only if the Intermediary is a “foreign regulated person”². The Licensee should assume that the Intermediary is unregulated unless evidence is provided to show otherwise. The Licensee is required to include in its records information evidencing that the Intermediary is a “foreign regulated person” and that the Licensee has assessed the risk of relying on the Intermediary³.
- 1.1.2 The Licensee can rely on the Intermediary to obtain and hold the due diligence **evidence**⁴ in relation to a company, however this due diligence documentation must be obtainable by the Licensee within 72 hours of a request for it.
- 1.1.3 The Licensee also can rely on the due diligence **information**⁵ provided to the Licensee during the pre-incorporation period by the Intermediary. The Licensee must hold on its files all required due diligence information, which can be obtained from the Intermediary by email.
- 1.1.4 The Licensee is strongly advised not to enter into any relationship with multi-layered intermediaries due to the increased inability to access the due diligence when requested and thus the inability to comply with the AML/CFT legislation.

1.2 *Service Agreement with Intermediary*

- 1.2.1 When entering into a business relationship with an Intermediary, it is best practice for the Licensee to enter into a service agreement with the Intermediary under which the Intermediary agrees, prior to the Licensee incorporating a company or accepting the transfer of a company from another licensee at the request of the Intermediary, and on an ongoing basis for purposes of supporting ongoing monitoring by the Licensee:
 - a. to apply all customer due diligence measures as defined in section 4 of the AML/CFT Regulations, including obtaining records evidencing the name, residential address, date of birth and nationality of all shareholders, beneficial owners, directors, officers, controllers or holders of powers of attorney;

¹ See Appendix 2 for definition of “intermediary”

² See Appendix 2 for definition of “Foreign Regulated Person”

³ See Section 26 of the AML/CFT Code

⁴ See Appendix 4 for an explanation of the difference between due diligence “information” and due diligence “evidence”

⁵ See Appendix 4 for an explanation of the difference between due diligence “information” and due diligence “evidence”

- b. to undertake Google and/or internet based due diligence searches of all directors, officers and legal and beneficial owners;
- c. to obtain information and documentation as necessary on the source of funds, location, purpose and nature of the business or intended business, including any existing website, and to understand the structure of the company;
- d. to collect a copy of any annual business license, extract from any asset register, e.g. shipping register, yacht register, airplane register, land title register, etc. or any other record that evidences the nature of the business to be conducted by the company;
- e. to collect any bank account opening information and any other relevant information;
- f. to provide the Licensee with the due diligence information obtained by the Intermediary prior to incorporation or the transfer of the company to the Licensee from another licensee, and to provide the Licensee with the due diligence information on an ongoing basis as applicable;
- g. to provide the Licensee with a copy of any records evidencing the due diligence collected within 72 hours of any request;
- h. where the information in relation to (a) to (e) changes, to provide updated information to the Licensee within a reasonable time period (5-7 days); and
- i. to obtain written confirmation from the directors of the company on an annual basis of any changes to the information provided in (a) to (e) or any other significant matters impacting the company.

1.3 *Due Diligence by the Licensee*

- 1.3.1 Necessary due diligence measures not taken by the Intermediary must be carried out by the Licensee. If the Licensee requires additional due diligence, the additional due diligence can be obtained through the Intermediary who is permitted to maintain the primary relationship with the company.
- 1.3.2 Due diligence measures to be applied by the Licensee must include obtaining and reviewing identification and verification of identification information for all directors, officers and ultimate beneficial owners of the company, information on source of funds and information on the location and nature of the business to be conducted by the company. The Licensee must understand the structure of the company⁶.

1.4 *Risk Assessment*

- 1.4.1 The Licensee itself must complete a risk assessment prior to incorporation of a company (or accepting the transfer of a company from another licensee) based on the due diligence information provided by the Intermediary and any additional due diligence obtained by the Licensee. Additional information on how to conduct a risk assessment can be found in section 10(3) of the AML/CFT Code along with relevant guidance.

⁶ See Appendix 3

1.5 *Enhanced Due Diligence*

- 1.5.1 Based on the assessed level of risk, the Licensee may be required to apply enhanced due diligence⁷. Enhanced due diligence can include obtaining further identification and relationship information and documentation (see section 11 of the AML/CFT Code) as well as additional information, including documentation as necessary, on source of funds, source of wealth and location and nature of business. As a best practice, in cases where the company will operate or is operating in a jurisdiction considered to be of higher risk, the enhanced due diligence may include the Licensee reviewing the jurisdiction's most recent Mutual Evaluation Report for its level of compliance with international AML/CFT standards.
- 1.5.2 Prior to incorporating the company, or accepting its transfer from another licensee, the Licensee also should consider the nature and level of "ongoing monitoring" that will be necessary post-incorporation or after accepting the transfer of the company from another licensee (see below).
- 1.5.3 The Licensee can incorporate the company (or accept the transfer of the company from another licensee) in reliance on the customer due diligence conducted by the Intermediary and any necessary additional due diligence of its own, if satisfied that the customer due diligence is in order and that, based on the customer risk assessment the Licensee has conducted, the risk level is acceptable. The Licensee may decide not to incorporate the company (or accept the transfer of the company from another licensee) if it is determined that the risk is too high for whatever reason.

2.0 Post-Incorporation

2.1 *Ongoing Due Diligence/Monitoring*

- 2.1.1 The Licensee must conduct ongoing due diligence/monitoring as required to address the previously assessed level and nature of risk that applies to the company. The Intermediary can continue to have the primary relationship with the company and provide ongoing due diligence records and information concerning the company to the Licensee. The Service Agreement referred to under section 1.2 above usefully could describe the Intermediary's role in this regard. The Intermediary can continue to collect and hold the pre-incorporation and post-incorporation due diligence evidence, but must be able to provide it to the Licensee without delay and within 72 hours of a request. However, the Licensee **cannot** rely on the Intermediary to conduct ongoing monitoring, in particular to review any ongoing due diligence collected on behalf of the Licensee.
- 2.1.2 Effective ongoing due diligence/monitoring⁸ may include obtaining and reviewing copies of the following (**as applicable**):
 - a. Annual business license

⁷ See section 12 of the AML/CFT Regulations and the Guidelines following section 11(a) of the AML/CFT Code

⁸ See Appendix 4 for an explanation of ongoing monitoring

- b. Copy of updated extract from asset register, e.g. shipping register, yacht register, airplane register, land title register, etc.
 - c. Bank account opening applications for all bank accounts opened in the year
 - d. Annual confirmation from directors on any changes or updates to company information (including shareholders, directors, UBOs, nature of business and other relevant information)
 - e. Company website reviews (printouts)
 - f. Google or equivalent searches (printouts) for information on the company and its directors, officers and UBOs
 - g. Marketing materials or other information as necessary to evidence the nature of the business conducted
- 2.1.3 Additional due diligence information should be obtained based on the level of risk and the particular circumstances that apply to the company (see AML/CFT Code, sections 10, 11 and 11A), e.g. management accounts, audited accounts (if prepared), copies of bank accounts, etc.
- 2.1.4 If the Licensee is unable to obtain the necessary ongoing due diligence for the company, the Licensee is required to terminate its relationship with the company and to file a suspicious activity report.

Model 2 – Company Not Administered Through an Intermediary

1.0 Pre-Incorporation

Prior to incorporating a company (or accepting the transfer of a company from another licensee), the Licensee must apply and document customer due diligence measures in relation to the company and conduct and document a risk assessment of the company.

1.1 *Due Diligence*

1.1.1 Due diligence measures applied by the Licensee must include obtaining and reviewing identification documentation for all directors, officers and ultimate beneficial owners of the company, and information and documentation as necessary on source of funds and on location, purpose and nature of the business to be conducted by the company. The Licensee must understand the structure of the company⁹.

1.1.2 The customer due diligence process should include Google and/or other internet based due diligence searches of directors, officers and legal and beneficial owners and a review and assessment of information about the source of funds and the location and nature of business, including any existing website.

1.2 *Risk Assessment*

1.2.1 The Licensee must complete a risk assessment prior to incorporation of a company (or accepting the transfer of a company from another licensee) based on the due diligence information and documentation obtained by the Licensee. Additional information on how to conduct a risk assessment can be found in section 10(3) of the AML/CFT Code along with relevant guidance.

1.3 *Enhanced Due Diligence*

1.3.1 Based on the assessed level of risk, the Licensee may be required to apply enhanced due diligence¹⁰. Enhanced due diligence can include obtaining further identification documentation and relationship information (see section 11 of the AML/CFT Code) as well as additional information, including documentation as necessary, on source of funds, source of wealth and location and nature of business. As a best practice, in cases where the company will operate or is operating in a jurisdiction considered to be of higher risk, the enhanced due diligence may include the Licensee reviewing the jurisdiction's most recent Mutual Evaluation Report for its level of compliance with international AML/CFT standards.

1.3.2 Prior to incorporating the company or accepting its transfer from another licensee, the Licensee also should consider the nature and level of “ongoing monitoring” that will be necessary post-incorporation or after accepting the transfer of the company from another licensee (see below).

⁹ See Appendix 3

¹⁰ See section 12 of the AML/CFT Regulations and the Guidelines following section 11(a) of the AML/CFT Code

- 1.3.3 The Licensee may decide not to incorporate the company if it is determined that the risk is too high for whatever reason.

2.0 **Post-Incorporation**

2.1 ***Ongoing Due Diligence/Monitoring***

- 2.1.1 The Licensee must conduct ongoing due diligence/monitoring as required to address the previously assessed level and nature of risk that applies to the company.

- 2.1.2 Effective ongoing due diligence/monitoring¹¹ may include obtaining and reviewing copies of the following (**as applicable**):

- a. Annual business license
- b. Copy of updated extract from asset register, e.g. shipping register, yacht register, airplane register, land title register, etc.
- c. Bank account opening applications for all bank accounts opened in the year
- d. Annual confirmation from directors on any changes or updates to company information (including shareholders, directors, UBOs, nature of business and other relevant information)
- e. Company website reviews (printouts)
- f. Google or equivalent searches (printouts) for information on the company and its directors, officers and UBOs
- g. Marketing materials or other information as necessary to evidence the nature of the business conducted

- 2.1.3 Additional information should be obtained based on the level of risk and the particular circumstances that apply to the company (see AML/CFT Code, sections 10, 11 and 11A), e.g. management accounts, audited accounts (if prepared), copies of bank accounts, etc.

2.2 ***Agreement with Company to Provide Ongoing Due Diligence***

- 2.2.1 A best practice that would enable the Licensee to conduct effective ongoing monitoring would be to enter into an agreement with the company, dated as at the date of incorporation of the company and signed by the directors of the newly incorporated company, to include that the company:

- a. agrees to file (annually or otherwise as applicable) the following (**as applicable**) with the Licensee:
 - i. annual business licence
 - ii. copy of updated extract from asset register, e.g. shipping register, yacht register, airplane register, land title register, etc.
 - iii. bank account opening applications for all bank accounts opened in the year
 - iv. website address(es)

¹¹ See Appendix 4

- v. completed annual questionnaire providing updates on company information (including shareholders, directors, UBOs, websites, nature of business and other relevant information)
 - vi. marketing materials or other information as necessary to evidence the nature of the business conducted and
 - vii. any other information that the Licensee considers necessary for ongoing due diligence purposes;
- b. acknowledges that the Licensee is required to terminate its relationship with the company and to file a suspicious activity report if unable to obtain the necessary ongoing due diligence from the company; and
- c. agrees to immediately inform the Licensee of the business becoming active, of any change in the nature of the business conducted or to be conducted, any change in ownership or of directors, officers, controllers or holders of powers of attorney, and of any other significant matters impacting the company.

Compliance with the procedures outlined in these Guidelines will be assessed by the Commission during routine and themed onsite examinations of Licensees which will include a review of the due diligence files for a random sample of companies. Failure by a Licensee to comply with the due diligence requirements of the AML/CFT Regulations and Code may result in the Licensee being required to discontinue its relationship with the company and Intermediary if applicable and, regardless of whether or not an Intermediary is involved, may impact the Licensee's fit and proper status and its eligibility to continue to conduct company management business.

Amended as approved by the Board
26 October 2017

Appendix 1

Reliance on Third Parties

FATF Recommendation 17 (Reliance on Third Parties) states that “Countries may permit financial institutions to rely on third parties to perform elements (a) - (c)¹² of the CDD measures set out in Recommendation 10 or to introduce business, provided that the criteria below¹³ are met.”

The third criterion of Reliance on Third Parties states that “the financial institution should satisfy itself that the third party is **regulated, supervised or monitored for**, and has measures in place for compliance with, CDD and record keeping requirements in line with Recommendations 10 and 11.” Thus Licensees should ensure there is evidence available on their files that the eligible intermediary is regulated, supervised or monitored.

What does “regulated, supervised or monitored” mean? The Caribbean Financial Action Task Force advises that “It is not enough to subject third parties to AML/CFT legislation. Regulated is intended to include some form of supervision which may be a primary or rudimentary level or monitoring”; “...regulation **and** supervision or monitoring of the third party is required”. Regarding any distinction between supervision and monitoring, CFATF indicates that there is “...no precise distinction if one reviews the FATF Recommendations”.

Note as well that FATF Recommendation 28, which covers designated non-financial businesses and professions (“DNFBPs”), also known as non-regulated service providers, requires that DNFBPs be “subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements”. DNFBPs include lawyers and accountants who are involved in financial services business. The supervisory requirements for such persons and/or entities as provided for in the definition of “foreign regulated person”¹⁴ can be met through oversight conducted by a self-regulatory body (“SRB”). Note again that FATF Recommendation 28 requires that the SRB “ensures that its members comply with their obligations to combat money laundering and terrorist financing.”

¹²

- a) Identification and verification of the customer’s identity using reliable independent source documents, data or information
- b) Identification and verification of the ultimate beneficial owner, (pertinent details of how the identity has been verified, e.g. passport details, including the country of issuance, date of expiration and passport number)
- c) Understanding and obtaining information on the purpose and intended nature of the business relationship

¹³ The criteria that should be met are as follows:

- (a) A financial institution relying upon a third party should immediately obtain the necessary information concerning elements (a) – (c) of the CDD measures set out in Recommendation 10
- (b) Financial institutions should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.
- (c) The financial institution should satisfy itself that the third party is regulated, supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendation 10 and 11.
- (d) When determining in which countries the third party that meets the conditions can be based, countries should have regard to information available on the level of country risk.

¹⁴ See definition of foreign regulated person in Appendix 2.

Appendix 2

Intermediaries

An intermediary is defined in section 1 of the AML/CFT Regulations¹⁵. Pursuant to section 13 of the AML/CFT Regulations, Licensees may rely on intermediaries to apply customer due diligence measures, provided that:

- a) the intermediary is a regulated person¹⁶ or a foreign regulated person¹⁷;
- b) the intermediary consents to be relied on and that the intermediary complies with all applicable Anguillian legislation, regulations, codes, guidelines and regulatory directives;
- c) the intermediary therefore applies customer due diligence measures with respect to the customer (directors, officers, legal and beneficial owners) and can retain due diligence evidence [Note that the due diligence evidence cannot be retained by an introducing agent of the intermediary];
- d) the intermediary provides the Licensee with all due diligence information (i.e. significant information obtainable from the due diligence evidence¹⁸) and other information as stated in the Models and agrees to provide due diligence evidence as requested by the Licensee and/or the Commission without delay in accordance with section 13(2)(c) and (d) of the AML/CFT Regulations (The Licensee should ensure it can make due diligence evidence available to the Commission within three (3) business days of the request); and
- e) the Licensee remains liable for any failure by the intermediary to apply customer due diligence measures.

¹⁵ Section 1 of the AML/CFT Regulations defines an intermediary as “a person who has or seeks to establish a business relationship or to carry out an occasional transaction on behalf of the customer with a service provider, so that the intermediary becomes a customer of the service provider.”

¹⁶ Section 1 of the AML/CFT Regulations defines a regulated person as “a person holding a regulatory license”.

¹⁷ Section 7 of the AML/CFT Regulations defines a foreign regulated person as follows:

“Foreign regulated person” means a person—

- (a) that is incorporated in, or if it is not a corporate body, has its principal place of business in, a jurisdiction outside Anguilla (its “home jurisdiction”);
- (b) that carries on business outside Anguilla that, if carried on in Anguilla, would fall within a category of business specified in Schedule 1, paragraphs (a) to (i);
- (c) that, in respect of the business referred to in paragraph (b)—
 - (i) **is subject to legal requirements in its home jurisdiction for the prevention of money laundering and terrorist financing that are consistent with the requirements of the FATF Recommendations for that business; and**
 - (ii) **is subject to effective supervision for compliance with those legal requirements by a foreign regulatory authority.**

Section 1 of the AML/CFT Regulations defines a “foreign regulatory authority” as follows:

“an authority in a country outside Anguilla which exercises in that country supervisory functions substantially corresponding to those of the Commission or another relevant supervisory authority with respect to enforcing compliance with the Act, these Regulations and the Code.”

¹⁸ See Appendix 4 for an explanation of the difference between due diligence “information” and due diligence “evidence”.

Appendix 3

Key Considerations: Understanding a Company's Structure¹⁹

1. Understand not only what your client is trying to achieve, but how they are trying to do so. Are there any unusual or unwarranted complexities about the structure you are being asked to administer or the structure from which funds are being received?
2. Ensure that you understand the role each entity in a structure performs and why it is there.
3. Are there any entities connected with jurisdictions which have unusual secrecy provisions?
4. Obtain documentary evidence as to the ultimate beneficial ownership and control of the structure.
5. Be alert, and be skeptical. If something does not seem right, it may not be - and you should look into it.
6. Do not place undue reliance on the status of any introducer or referrer of business. They are not the individuals who face the risks you are facing.
7. Do not be blinded by commercial returns which you will make on establishing a structure or otherwise facilitating transactions. Ask yourself why a client is seemingly willing to pay over the going rate or even pay the going rate for something that could be accomplished at a lower cost. It may be a sign of attempted money laundering.
8. Finally, do not forget about your obligations under the criminal law to report suspicious activity. Fraud, or attempted fraud, is usually sufficient grounds for filing a SAR.

¹⁹ Shorrocks, Ed. "*Credit Agricole v Papadimitiou*". Bakers and Partners 2015. 13 July 2015.
<http://www.bakerandpartners.com/media/21156/150519-credit-agricole-v-papadimitriou-article-es-csv2.pdf>

Sorensen, Charles. "*Credit Agricole v Papadimitiou*". Bakers and Partners 2015. 13 July 2015.
<http://www.bakerandpartners.com/media/21156/150519-credit-agricole-v-papadimitriou-article-es-csv2.pdf>

Appendix 4

Customer Due Diligence Evidence and Customer Due Diligence Information

Section 13(3) of the AML/CFT Regulations²⁰ requires that a Licensee who relies on an Intermediary to apply customer due diligence measures must immediately obtain from the Intermediary the due diligence information concerning the customer, third party or beneficial owner.

There is a distinction between due diligence evidence and due diligence information. **Due diligence evidence** comprises the actual documentation evidencing identification and verification of identification such as the certified copy of a passport and other identification documents, certified utility bill, etc. and incorporation documents. Due diligence evidence can be retained by an Intermediary. **Due diligence information** is required to be obtained by the Licensee (prior to incorporation of the company) from an Intermediary and comprises the significant information obtainable from the actual documentation held by the Intermediary, including the name, gender, residential address, date and country of birth of an individual and the name, date and place of incorporation of any legal entity associated with the company, as well as information about the purpose and nature of the business relationship²¹, including the nature of the business to be conducted. Due diligence information can be obtained by email and retained as a copy of that email.

This basic information is necessary to enable the Licensee adequately to assess the AML/CFT risk and to evidence the basis for its customer risk assessment.

Ongoing Due Diligence/Monitoring

Ongoing monitoring is the sole responsibility of the Licensee. Ongoing monitoring is defined in section 4(5) of the AML/CFT Regulations²². Although the acquisition of due diligence may be outsourced, the scrutinizing and analysing of the customer due diligence information and evidence obtained is to be conducted by the Licensee using a risk-sensitive approach.

The Commission expects that, in cases where there is a consistent pattern displayed by an Intermediary of poor quality of customer due diligence information and documentation and problematic customers, the relationship will be terminated.

²⁰ “Where a service provider relies on an introducer or an intermediary to apply customer due diligence measures in respect of a customer, third party or beneficial owner, the service provider shall immediately obtain from the introducer or intermediary, the customer due diligence information concerning the customer, third party or beneficial owner.”

²¹ FATF Recommendation 10 (a-c)

- a) Identifying the customer and verifying that customer’s identity using reliable independent source documents, data or information
- b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner (pertinent details of how the identity has been verified, e.g. passport details, including the country of issuance, date of expiration and passport number)
- c) Identifying the purpose and intended nature of the business relationship, including the nature of the business to be conducted.

²² “Ongoing monitoring” of a business relationship means—

- (a) scrutinising transactions undertaken throughout the course of the relationship, including where necessary the source of funds, to ensure that the transactions are consistent with the service provider’s knowledge of the customer and his business and risk profile; and
- (b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date and relevant by undertaking reviews of existing records.