



17<sup>th</sup> August 2016

Dear Stakeholders:

**ANNEX II– Sector Specific Guidance Notes for Anti-Money Laundering & Anti-Terrorist Financing (AML/ATF) Regulated Financial Institutions carrying out Long-Term Insurance Business**

The Bermuda Monetary Authority (the “Authority”) would like to thank stakeholders for reviewing and providing comments on the “Sector Specific Guidance Notes for Anti-Money Laundering & Anti-Terrorist Financing Regulated Financial Institutions carrying out Long-Term Insurance Business” (“Long-Term Insurance GN”) which was issued for consultation on 27<sup>th</sup> April 2016.

As stated in the Notice to the Long-Term Insurance GN, the Authority will be issuing sector-specific guidance notes, which applies the Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-Money Laundering & Anti-Terrorist Financing (“AML/ATF GN”) to the specific sector. As the Long-Term Insurance GN must be read in conjunction with the AML/ATF GN, our responses to the comments received were aligned with our responses to the AML/ATF GN, where applicable.

It is important that the Bermuda AML/ATF regime be aligned with international standards, and as such, we appreciate the support and valuable feedback received from our stakeholders in achieving this objective.

**CONSOLIDATION OF COMMENTS – AML/ATF INSURANCE GUIDANCE NOTES**  
**Sector-Specific Guidance Notes for Long-Term Insurance Business**

The Bermuda Monetary Authority (“the BMA” or “the Authority”) issued “Sector-Specific Guidance Notes for Long-Term Insurance Business”, which forms part of the Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-Money Laundering & Anti-Terrorist Financing (“AML/ATF GN”), for consultation and we received the following comments below. The responses to some of the comments are aligned with the responses provided for the AML/ATF GN.

<b>Section</b>	<b>Comment</b>	<b>BMA Response</b>
General	While we do encourage and promote a culture of compliance the proposed points mentioned above are considered to be highly detrimental to our business and are not considered feasible to implement. We appreciate the opportunity to provide feedback on the proposed Guidance Notes and hope to work with the BMA to reach reasonable compromises that do promote a culture of compliance while still allowing good business to be written.	The BMA welcomes feedback and will consider specific concerns in the context of the comment itself.
General	We acknowledge that whilst the scope of the proposed Schedule XVIII and Guidance Notes is limited to those insurance managers or insurers that carries on or acts in connection with Long-Term business (other than reinsurance business) falling within paragraph (a) or (c) of the definition of “long-term business” in section 1, as previously conveyed in a meeting, would recommend that the BMA consider a ‘streamlined’ approach in accordance with the principle of proportionality for those within scope who are in run-off.	Given the varying risk profiles of Regulated Financial Institutions (RFI), the Authority utilises a risk-based approach as part of its regulatory and supervisory model. The Authority expects insurers, including those who are in run-off, to adhere to the AML/ATF GN and the sectoral guidance, and apply a risk-based approach to meeting their AML/ATF obligations. The Authority expects insurers to be in a position to justify that their approach sufficiently covers the regime to which they are required to comply. The Authority will consider where insurers are along the run-off phase as part of its view on their compliance with the AML/ATF regime.
General	In relation to the internal audit requirement, given that there are procedures and controls in place, we suggest the frequency of the independent internal audit on AML policies, procedures and controls is to be conducted on a risk basis, at least once every	The internal audit function is intended to monitor and test the implementation, integrity and effectiveness of the AML/ATF policies, procedures and controls. One year is considered prudent to conduct the internal audit and report to senior

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	two years, instead of once every year.	management any gaps or weaknesses so that they can be addressed.
II.20	<p>“Requirement to Appoint a Compliance Officer at senior management level to oversee the establishment, maintenance and effectiveness of the company’s AML/ATF policies, procedures and controls.” For many companies, ensuring a Compliance Officer at senior management level can be an onerous requirement. We would suggest that alternatively, it should be up to the company to apply a risk based approach and ensure that the Compliance Officer appointed is sufficiently qualified and has suitable compliance experience to effectively perform the Compliance Office function. Many companies already have broad oversight of compliance operations through Board Committees and senior management. Verification is sought from the BMA to confirm whether the RFI is allowed to outsource the compliance function, rather than internally appointing a Compliance Officer, especially for smaller sized firms.</p>	<p>Based on feedback on the AML/ATF GN, the Authority has amended the guidance notes to state that the Compliance Officer will be appointed at the managerial level and reports to senior management.</p> <p>The Authority will amend the sectoral guidance notes to be aligned with the AML/ATF GN.</p>
II.33	<p>In section II.33, for a business having no operation in Bermuda, what is the definition of foreign Politically Exposed Person (PEP)? If a PEP locates in the country where the business operates, is he/she classified as foreign PEP or domestic PEP?</p>	<p>Classification of the client would be done by the entity that the client is doing business with. In response to the specific situation raised by the stakeholder, a domestic PEP of an overseas operation would be treated as a foreign PEP for the purpose any relationship with a Bermuda RFI.</p>
II.34	<p>In section II.34, knowledge and suspicion on money laundering should be reported to Financial Intelligence Agency (FIA). However, for a Company with no business in Bermuda, in case when suspicious transaction identified has been reported to the local designated reporting authority where the business operates (with same function and capacity as the FIA) , do the BMA and FIA rely on the reporting made to such designated reporting authority in the operating jurisdiction? Similarly, when the</p>	<p>The Bermuda RFI must report all suspicious activity reports to the FIA. Its overseas operations would be required to file suspicious activity reports with the local FIA of that jurisdiction.</p>

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	<p>company suspects that a customer is a sanctioned person and has already reported to the local designated reporting authority as mentioned above, does the BMA also rely on the reporting made to the local designated reporting authority without requiring to report again to the Governor and BMA as for cross-jurisdiction cooperation?</p>	
II.40	<p>In section II.40, it is stated that the "RFIs should ensure that screenings are conducted both for the RFI itself and for any third party service provider, reinsurer, agent, broker, introducer, manager, or other intermediary." Please clarify the meaning on whether it requires the RFI to screen the third party service provider, reinsurer, agent, broker, introducer, manager, or other intermediary, or the RFI is required to ensure the third party service provider, reinsurer, agent, broker, introducer, manager, or other intermediary have the screening process in place. What if the third party service provider is not subject to relevant AML requirements?</p>	<p>RFIs must ensure that the persons they are dealing with are fit and proper, whether or not they are regulated and/or subject to applicable AML/ATF requirements; and the screening process assists RFIs in that regard. The screening process may include ensuring that the third party has an appropriate screening process of its own and that it is implemented. Where the third party is not subject to AML/ATF requirements, the RFI may need to conduct further or enhanced due diligence on that third party.</p>
II.40- II.42	<p>Clarification is sought from the BMA to confirm that a RFI is responsible for ensuring the screening of staff of all insurers, third party service providers and intermediaries. We would appreciate further clarification with regards to the extent and intent of these proposed guidelines. If an intermediary, insurer or third party is domiciled in a jurisdiction that is not equivalent to Bermuda, how does the BMA propose a small RFI to effectively assess the screening processes for each owner, director, manager and employee of such a firm?</p>	<p>Broadly, an RFI is responsible for screening its employees and for checking whether any intermediaries have appropriate screening policies and procedures in place. The approach taken in Bermuda should serve as the reference point for dealing with entities in other jurisdictions. If an RFI is dealing with an intermediary in a jurisdiction that does not have equivalent standards to what is required in Bermuda, the RFI would be expected to apply Bermuda equivalent standards to that relationship.</p>
II.62; II.67; II.68	<p>The Guidance Notes seem to be contradictory with regards to the source of wealth requirement from a Customer Due Diligence perspective 11.62 advocates that source of wealth associated with a customer must be identified, whereas 11.67 advocates that enquiries with regards to source of wealth should be made. The guidance notes then go on to say in 11.68 that the extent of</p>	<p>Where RFIs have determined that higher risks are present and/or they need to conduct enhanced due diligence, the RFI should investigate the source of wealth. Depending on the risk rating of the client, identifying the source of wealth could be a mandatory requirement.</p>

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	<p>enquiries should be made using a risk-based approach.</p> <p>It would appear as if the intention of the Guidance Notes would be that the RFI should make enquiries as to how a customer has acquired the wealth to be used as premium for an insurance policy and assess the reasonability thereof.</p>	<p>The BMA will amend the Insurance Guidance notes as follows:</p> <ul style="list-style-type: none"> <li>• The following sentence will be added to the end of para II.60: “Where EDD is a requirement, the RFI must understand the true source of wealth flowing through the insurance product”.</li> <li>• The following reference would be removed from the 2<sup>nd</sup> bullet of II.62: “<del>source of wealth</del>”.</li> </ul>
<p>II.65; II.135; II.136</p>	<p>Some third party payments may be considered as low risk because of the premium amount involved and/or product nature. It is suggested to allow more flexibility to the insurer in relation to the requirement of obtaining relationship details between payer and policyholder. For example, insurers should take reasonable measures to establish the source of funds from a third-party payer.</p>	<p>Without prejudice to those falling under the threshold referenced in Reg 10.6 (POCR), it is up to the RFI to apply a risk based approach when determining their exact approach to CDD. Depending on the RFIs risk assessment, simplified due diligence may be applied in low risk cases. Therefore, the risk-based approach would require a comprehensive analysis to determine risk and thus an appropriate response on that basis.</p> <p>The BMA will amend para II.134 of the Insurance Guidance Notes to read: “Subject to paragraph 10(6) of the Proceeds of Crime Regulations 2008, an RFI should establish....”</p>
<p>II.93</p>	<p>“When the RFI is reasonably satisfied that a controller is regulated in a jurisdiction that has at least equivalent AML/ATF requirements as Bermuda, the RFI can consider applying a different (reduced) level of verification.” Is it the Authority's intention to issue a list of jurisdictions that they deem to have equivalent AML/ATF requirements?</p>	<p>The Authority will not be providing a list. The Authority will amend the AML/ATF GN and the Insurance Guidance notes to make reference the provisions of Regulation 11(1) of the Proceeds of Crime Regulations 2008.</p>
<p>II.110</p>	<p>Per the Guidance Notes, the BMA is advocating the above three circumstances whereby an RFI may rely on an intermediary - please can the BMA clarify that in this reliance it is possible to rely on the intermediary to obtain copies of all CDD documentation from the client in cases where the RFI has not had a face-to- face interaction with the client. In such a circumstance the RFI would still have on record all CDD documents for a client they would however rely on the</p>	<p>RFIs can rely on the identification and verification documents supplied by intermediaries regulated for AML/ATF purposes in equivalent jurisdictions (refer to Chapter 5 of the AL/ATF GN). However, as per Paragraph 6.66 of the AML/ATF GN, they should not just assume that the customers have been screened for sanctions compliance. RFIs should additionally take into account the risk mitigation methods suggested in Paragraph 2.63 of the AML/ATF GN and should there be any doubts about the veracity</p>

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	intermediary to obtain copies of the original CDD documents on their behalf. It is important to note that in any such case the intermediary in question would be based in a firm based in a country with AML/AFT equivalence to Bermuda.	or adequacy of the documents, they should re-verify the information.
II.147- II.148	According to ¶II.148, the simplified due diligence is applicable to financial institutions which are regulated under the BMA only. However, by referencing similar requirements from other Financial Action Task Force (FATF) members, the simplified due diligence can also be applied to financial institutions which are located and regulated in a jurisdiction where it is a FATF member and imposed with similar AML/ATF requirements. It is suggested to extend the scope of the customer who may be subject to simplified due diligence in this regard.	Simplified due diligence may be applied to financial entities regulated in Bermuda or by an equivalent jurisdiction. Ultimately, if simplified due diligence is performed then certain criteria must be applied. It should not be assumed that a RFI of an equivalent jurisdiction automatically qualifies for simplified due diligence. As jurisdictions and their entities are applying a risk-based approach to the FATF Revised 40 Recommendations, the risk-based approach would vary between two jurisdictions and it would be up to the RFI to determine that the same outcomes are achieved.
II.198	Some financial institutions have branches operated in jurisdictions which are FATF members. Under their domestic regulations, the branches are already required to report suspicious transactions to the local intelligence units. Clarification is requested that the requirement under this section does not oblige these overseas branches to file external suspicious reports to the Bermuda FIA.	Similar to our response on the AML/ATF GN, Bermuda RFIs are required to file suspicious activity reports to the FIA. Their overseas operations (including branches) must file suspicious activity reports with the local FIA of that jurisdiction.
II.212- II.213	Clarification is sought from the BMA on these sections as it relates to the extent of employee and intermediary training. From an external perspective with regards to intermediary firms and third parties, are the Guidance Notes advocating that large intermediary firms be trained on the AML/ATF guidelines of the Bermuda company? If so, would it be acceptable for the Bermuda firm to obtain confirmation from the intermediary firm that relevant staff has been provided with sufficient AML/ATF training in their specific jurisdiction?	Bermuda RFIs should ensure that third parties and intermediaries they deal with are subject to AML/ATF oversight. Recommendation 18 (and its Interpretive Note) requires that employees must be trained on AML/ATF obligations and on an organisation's AML/ATF policies and procedures. As part of its due diligence, the RFI should ensure that the third party or intermediary has AML/ATF policies and procedures and those employees are trained. Depending on the nature of the relationship, if the intermediary or third party is acting as an agent or outsourced arrangement of the RFI, then that organisation would need to be trained in the RFI's policies and procedures as they are acting on behalf of the RFI. Where the

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		entity is acting as a pure third party, then the RFI should determine whether those policies and procedures are of an equivalent standard and get confirmation that the third party's staff has been trained for AML/ATF.