

COMPLIANCE COMMISSION
GUIDANCE ON ELIGIBLE INTRODUCERS
(THIRD PARTY INTRODUCTION)
FOR
LAWYERS, ACCOUNTANTS,
REAL ESTATE BROKERS AND LAND DEVELOPERS

This guidance document for the Compliance Commission registrants serve to assist with understanding the requirements and responsibilities of financial institutions and third party introducers in relation to their duties under the Compliance Commission Codes of Practice and laws and regulations of The Bahamas.

A financial institution can rely on another financial institution for conducting Customer Due Diligence (CDD) on a client as long as that financial institution:

- ✓ Is regulated for AML/CFT purposes under the laws of The Bahamas or is a jurisdiction designated by the Minister that he considers fulfills the terms of subsection (2)(b)(ii) of section 9 of the Financial Transactions Reporting Act (FTRA 2018);
- ✓ Has a business relationship with the client concerned;
- ✓ Has conducted CDD at least at the standard required by Bahamian law;
- ✓ Has provided the reliant financial institution with the relevant identity information before they establish a business relationship or conduct an occasional transaction or activity;
- ✓ Submitted an original letter containing information which identifies the client and any beneficiaries or relevant beneficial owners, the client authority to act in those cases where he is not the ultimate beneficial owner and the purpose and intended nature of the business relationship and confirming that they;
- ✓ Can provide relevant verification information on request and without delay.

For example:

In a Designated Non-Financial Business and Profession (DNFBP) context which consist of lawyers, accountants and real estate brokers and land developers. This could mean that a DNFBP can rely on another DNFBP if all the above criteria are met. For instance, DNFBP W may wish to start a business relationship with company or client Q (“Company or client Q”). DNFBP W knows that company or client Q is a client of another DNFBP Z (“DNFBP Z”) and is satisfied that the appropriate level of CDD has been conducted. With the consent and or introduction of DNFBP Z, DNFBP W may rely on the CDD verification of company or client Q. However, as DNFBP W is a reporting entity requesting the verification of the CDD, DNFBP W remains responsible for ensuring the CDD is conducted in accordance with Bahamian law.

The DNFBP who is the eligible introducer is the one that has the initial contact and business relationship with the client and has conducted the CDD in a business transaction.

FINANCIAL TRANSACTIONS REPORTING REGULATIONS 2018 REQUIREMENTS

Reliance on due diligence by third party Regulation 9:

Subject to section 9 of the Act and any directions or guidance issued by the relevant supervisory authority; where a financial institution has obtained written confirmation from either –

- (a) a local financial institution; or
- (b) a foreign institution,

which has verified the identity of an individual, corporate entity, partnership or other unincorporated business entity, the financial institution may rely on the verification by the local financial institution or by the foreign financial institution¹.

FINANCIAL ACTION TASK FORCE (FATF) STANDARDS

Financial institutions may permit reliance on third parties to perform elements of the CDD to introduce business, provided that the criteria set out below are met:

- 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, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.
- c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.

Where such reliance is permitted, the ultimate responsibility for CDD measures remains with the financial institution relying on the third party.

The criteria that should be met when relying on third parties 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 above;
- (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;

¹ Financial Transactions Reporting Regulations 2018.

- (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.

When a financial institution relies on a third party that is part of the same financial group, and

- (i) that group applies CDD and record-keeping requirements, and programmes against money laundering and terrorist financing, and
- (ii) where the effective implementation of those CDD and record-keeping requirements and Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) programmes is supervised at a group level by a competent authority, the relevant competent authorities may consider that the financial institution applies measures through its group programme, and may decide that (d) above is not a necessary precondition to reliance when higher country risk is adequately mitigated by the group AML/CFT policies².

COMPLIANCE COMMISSION CODES OF PRACTICE REQUIREMENTS

RELIANCE ON THIRD PARTY (OR ELIGIBLE) INTRODUCERS

Who Is A Third Party / An Eligible Introducer?

A third party / eligible introducer is any one of the following:

- ✓ in the case of The Bahamas any other financial institution under section 3 and 4 of the FTRA;
or
- ✓ any foreign financial institution from a reputable jurisdiction who themselves are supervised or monitored for AML that is regulated by a body having equivalent regulatory and supervisory responsibilities as the Central Bank, the Securities Commission, the Insurance Commission, the Inspector of Financial and Corporate Services and the Gaming Board; or
- ✓ any other foreign financial institution from a jurisdiction outside of The Bahamas as having an equivalent or higher AML regulatory framework to that which exists under Bahamian law and which is also regulated by a body having equivalent regulatory and supervisory responsibilities as the Central Bank, the Securities Commission, the Insurance Commission, the Inspector of Financial and Corporate Services or the Gaming Board.

Financial institutions must satisfy themselves, prior to establishing the facility that the eligible introducer meets the specified requirements set out in accordance with the guidance.

Circumstances in which the firm may rely on a verification carried out by an eligible introducer to satisfy its primary obligation to verify a client:

Financial institutions must retain adequate documentation to demonstrate that its KYC/due diligence procedures have been fully implemented, and that the necessary verification of the

² Financial Action Task Force (FATF) Recommendation 17, 2012 revised 2018.

clients(s) have been executed. Depending on the circumstances, the financial institution may need to rely on a third-party (an eligible introducer independent or part of the same group) to undertake client due diligence measures. These measures must be in accordance with section 6(3) and sections 7-9 and 14 of the FTRA, except:

- (a) where the third party/eligible introducer is suspected of breach of the identified risk framework as defined; or
- (b) where the relevant facility holder has committed any offence designated as an identified risk.

Financial institutions relying on a third party (domestically or within a foreign jurisdiction) shall immediately obtain all necessary information and documentation required under section 6(3) of the FTRA from the third party, including the identity of each facility holder and beneficial owner. They are also required to take adequate steps to ensure that the third party will upon request, provide copies of all relevant documentation without delay and is subject to AML obligations and is under supervision for compliance of these obligations. Further, there must be no obstacles which would prevent the financial institution from obtaining the original documentation.

Notwithstanding the above, the ultimate responsibility for verifying the identity of a client rests with the financial institution. While they may rely on the due diligence carried out by a third party to satisfy its primary duty to verify identity, the financial institution remain responsible for compliance with the FTRA and its regulations, including all requisite reporting requirements.

Financial institutions should have screening mechanism in place to satisfy itself as to the third party's reputation and integrity based on publicly available information and as to such other matters regarding the third party i.e., subject to adequate AML laws and regulation in the context of its dealings with clients and is supervised for compliance with such regulation and hailing from a reputable jurisdiction³.

FINANCIAL TRANSACTIONS REPORTING ACT 2018 REQUIREMENTS

Reliance on customer due diligence by third party section 9:

- (1) A financial institution may rely on a third party to undertake customer due diligence measure as required by section 6(3), except –
 - (a) where the third party is suspected of breach of the identified risk framework as defined; or
 - (b) where the relevant facility holder has committed any offence designated as an identified risk.
- (2) The financial institution relying' on the third party shall –
 - (a) immediately obtain the necessary information required under section 6(3) from the third party, including the identity of each facility holder and beneficial owner;
 - (b) take adequate steps to satisfy itself that the third party –

³ Compliance Commission Codes of Practice.

- (i) will upon request, provide without delay copies of identification information and other relevant documents relating to customer due diligence requirements; and
 - (ii) is subject to AML/CFT obligations and it has adequate procedures for compliance with customer due diligence and record keeping requirements.
- (3) The Minister may by notice, prescribe from time to time designate any jurisdiction that he considers fulfills the terms of subsection (2)(b)(ii).
- (4) Notwithstanding any other provision in this section, the financial institution relying on a third party shall remain responsible for compliance with this Act, including customer due diligence and reporting requirements.
- (5) A financial institution relying on a third party that is part of the same financial group shall –
 - (a) apply customer due diligence, record-keeping requirements and internal controls and measures in accordance with the requirements under this Act;
 - (b) implement the customer due diligence, record-keeping requirements and internal controls and measures is supervised at the financial group level by a competent authority; and
 - (c) ensure that higher jurisdiction risk is adequately mitigated by the group’s identified risk framework.
- (6) A financial institution or designated non-financial business and profession shall report to the IRF Steering Committee where there has been persistent regulatory failure in respect of the identified risk framework or recognized weak compliance with international customer due diligence requirements by any jurisdiction or foreign financial institution⁴.

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⁴ Financial Transactions Reporting Act 2018.