

Guidance on Outsourcing of AML and Compliance Function



For DNEFBPs

SUPERVISED BY:

**THE COMPLIANCE COMMISSION OF
THE BAHAMAS**

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Applicability

This guidance is applicable to all Designated Non- Financial Businesses and Professions (DNFBPs). This includes real estate agents and brokers, land developers, dealers in precious metals, precious stones and pawn shops, lawyers, accountants, persons acting in the capacity of trustee and designated government agencies registered with the Compliance Commission.

Introduction

The Compliance Commission (“CC”) is responsible for regulating and supervising DNFBPs. The CC has begun work to gain a better understanding of the recent developments by registrants with regards to AML outsourcing. This guidance note seeks to bring awareness and understanding of this area to our registrants to ensure that they are exercising best practices when engaging with an outsourcing provider.

Purpose

These guidelines set out the CC requirements of a registrant that has entered into any AML outsourcing arrangement or is planning to outsource its compliance function to a service provider. Registrants should conduct a self-assessment of any existing AML outsourcing agreements against these Guidelines to ensure compliance.



The Commission is aware that the size, nature, complexity and resources of various registrants may warrant the need to outsource certain material functions of the firm. While AML compliance functions may be performed by third parties, legally the ultimate responsibility for complying with AML obligations and the quality of work rests with the registrant.

AML outsourcing is when a registrant determines to engage another company or person to conduct all or part of their AML compliance program. AML outsourcing may seem to be a cost-effective and efficient way of managing AML compliance, but it must be subject to appropriate oversight to avoid the firm becoming subject to penalties for failure to comply with the AML requirements. Accordingly, registrants must review carefully the risks associated with what specific AML functions will be outsourced as well as their risk tolerance, before they decide to outsource.

For example, certain labor-intensive functions such as collecting CDD, sanction screening, selective reporting and using automated systems may be considered lower risk. Alternatively, the registrant must evaluate the risks of outsourcing the filing of sensitive information such as suspicious transaction reports, transaction monitoring, internal investigations and assess if certain AML functions should be completed by the registrant.

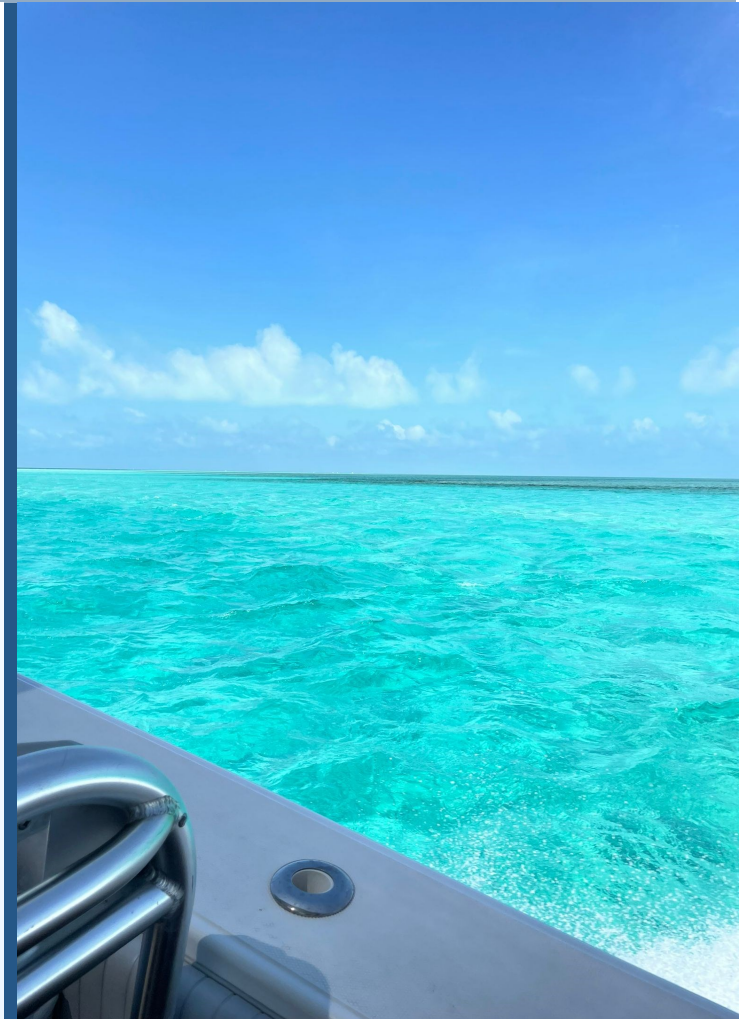
Registrants supervised by the CC act as “gatekeepers” and are often the first persons that interact with prospective clients and conduct or are involved in the relevant transactions. Accordingly, implementing a strong culture of compliance and an AML/CFT/CPF program is important to protect the financial system and mitigate the risks of ML/TF/PF.

Advisors can provide a few products and services including:

- ◆ Building your understanding of the ML/TF/PF risks facing your sector and your business
- ◆ Providing advice on your AML/CTF/CPF obligations
- ◆ Assisting you to develop a tailored money laundering and terrorism financing risk assessment for your business
- ◆ Assisting you to develop a tailored AML/CTF/CPF program for your business
- ◆ Assist in developing AML/CFT/CPF policies and procedures

Products and services offered by a AML advisor:

- Conduct independent reviews.
- Provide all compliance services required by Bahamian Laws and Guidelines (FIU regulations list the duties of the CO & MLRO.)
- Develop and maintain a detailed compliance program.
- Develop and maintain a detailed risk assessment program
- Conduct internal Compliance reviews.
- Complete regulatory filings.
- Conduct AML training.



What registrants should consider when selecting an AML Advisor?

What to look out for with regards to the advisors:

- Have you check and verified your advisor has relevant qualifications or experience, both with AML/CTF/CPF and your industry?
- Have you contacted their referees and verified the quality of their work with pervious clients?

All of these should be done prior to selecting your AML Outsourcing advisor. This is to ensure that you are aware of the quality of service being provided to you.

Things to avoid when selecting on advisor:

- The advisor is not familiar with the AML/CTF/CPF regulatory framework and your obligations.
- The advisor is not familiar with your industry or type of business.

Ensuring that your potential adviser is aware of your business is important. Your advisor should know the workings of your business to better be able to assist your company.

What to look out for with regards to the service

- The risk assessment and the AML/CTF/CPF program

Have you checked that the ML/TF/PF risk assessment of AML/CTF/CPF program they propose is compliant with the AML/CTF/CPF Act and AML/CTF/CPF Rules?

Have you checked that the ML/TF/PF risk assessment of AML/CTF/CPF program is not a template, and is tailored to your specific business needs?

Do you know what is in your ML/TF/PF risk assessment and AML/CTF/CPF compliance program and how these work, without needing to ask your advisor?

Your answer should be yes!

The Training (Your AML outsourced Compliance Provider may provide staff training.)

- Is the training they provide your employees tailored to the specific needs of your business and its ML/TF/PF risks?
- Is the training they provide your employees delivered frequently and in a way that is engaging for your staff?
- Does the training provide your employees with a solid understanding of the MT/TF/PF risks you reasonably face, and their respective roles in meeting your AML/CTF/CPF obligations? ie:
 - Practical tips on how to recognize and report ML/TF/PF
 - Insights into relevant ML/TF/PF techniques and methodologies

The Review

Can you demonstrate that the person you engaged to undertake independent reviews of your AML/CTF/CPF program was not involved in the design, implementation or maintenance of your program, or the development of your ML/TF/PF risk assessment and controls? This is, the agent authorized by the CC to conduct on-site examinations of registrants.

Things to avoid with regard to service

The ML/TF/PF risk assessment, AML/CTF/CPF program or staff training your adviser provides is a generic template, which they offer to all businesses, and is not tailored to your specific needs.

The advisor develops your ML/TF/PF risk assessment, AML/CTF/CPF program or staff training without consulting you about your ML/TF/PF risks and your existing safeguards to mitigate and manage those risks.

The AML/CTF/CPF risk awareness training they provide to your employees is very brief, general, or is easy for employees to complete without much engagement.



Advantages to Outsourcing

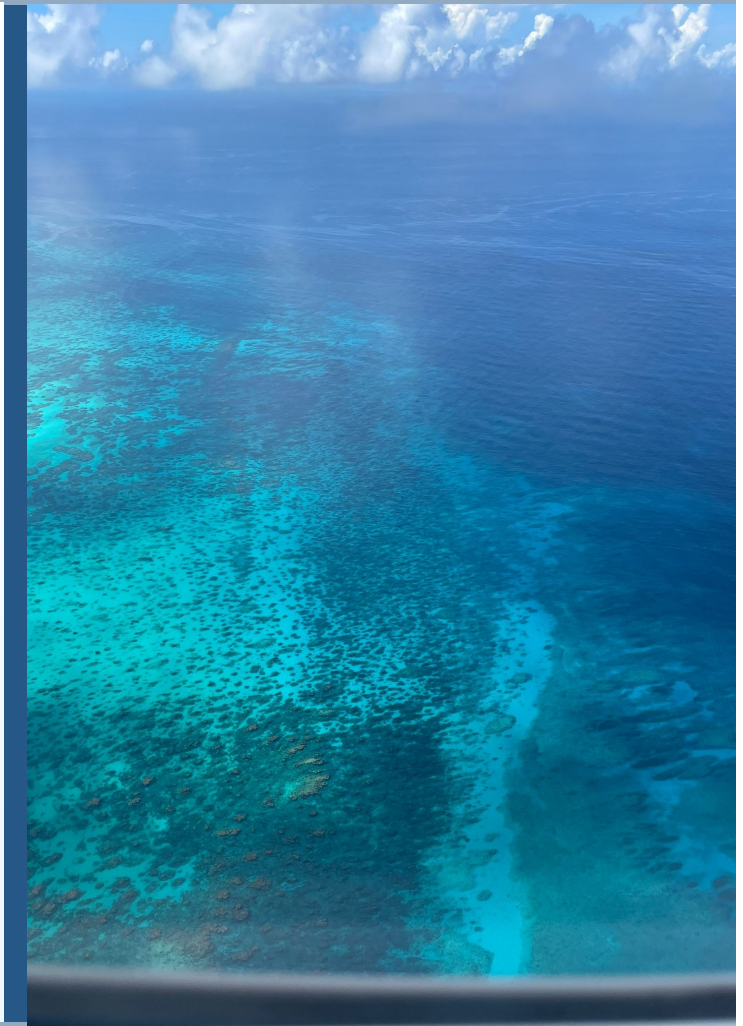
Every financial institution is required by law to have a compliance officer on staff to ensure the legal requirements for the institution is being upheld. With the right provider outsourcing can give the firm

- Access to specialists' knowledge, technology, and systems
- Relieve tons of workload from your core team
- Potential low cost of labour
- The outsourced professional would be able to focus solely on the compliance task.

Disadvantages to Outsourcing

Despite the many benefits of outsourcing, you don't want to go down this path until you compare these to the potential drawbacks:

- Lack of control – Even with providing the company with direction with regards to what is needed from them you relinquish control.
- Communication Issues – It is important that both parties agree to a preferred communication type. A drawback could be the speed of responses/replies which can delay account completion.
- Quality – The expected quality may not be up to the firm's standard.
- Confidentiality – With another firm having access to client's confidential data the risk of data breach has to be taken into consideration



Best Practices:

The Compliance commission is aware that some of its DNFBP's are engaging in outsourcing agreements. Although there are no specific notification requirements, we want to ensure that all our registrants exercise best practice when engaging in outsourcing arrangements therefore:

Registrants must ensure that the outsourcing agreement is in writing and signed by all considered parties. In this agreement it is important that the agreement includes, but not limited to, confidentiality clauses. This is important as the agent will not be in the office but will have access to your clients' private and personal information. Please also ensure that you have an exit strategy included in your arrangement.

The outsourcing agreement with a third party should be reviewed and updated as necessary to ensure that it continues to address accurately the outsourced function and the role of the third party to whom the outsourced function has been designated.

The Compliance function when outsourced must remain subject to appropriate oversight by the Head of Compliance and/or the Compliance Committee.

Registrants should ensure that any arrangements of an outsourced function do not impede the effective on-site examination by the Commission or its representative.

Senior management remains responsible for full compliance with all AML laws, guidelines, and regulations.

The outsourced functions must also remain within The Bahamas.

It is also very important to ensure that the agent has knowledge of your industry and sector. They must also be aware of your legal and regulatory requirements as it relates to national laws and guidelines. It is important to note that the **ultimate responsibility is on the firm** regarding if an agent fails to execute its function in an effective manner.