20 May 2020

The Anti-Money Laundering (Amendment)(No.2) Regulations, 2020

The *Anti-Money Laundering (Amendment)(No.2) Regulations, 2020* aim primarily to implement AML/CFT obligations in relation to transfers of virtual assets in the *Anti-Money Laundering Regulations (2020 Revision).* These obligations are included in updated Recommendation 15 of the *FATF's Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (Updated October 2019)* (FATF Methodology).

For the purposes of applying FATF Recommendation 16 – Wire Transfers, the FATF requires all virtual assets transfers to be treated as cross-border transfers. These obligations are captured in new **"Part XA – Identification and record-keeping requirements related to transfers of virtual assets"**. The requirement for virtual asset service providers to conduct customer due diligence on all one-off transactions is included in clause 4 which amends regulation 11.

In addition to these amendments, the *Anti-Money Laundering (Amendment)(No.2) Regulations, 2020* include two other provisions which are necessary for compliance with the FATF Recommendations. These are set out in clauses 3 and 6.

Clause 3 addresses updated Recommendation 18.2(c) which requires financial groups to implement group-wide programmes against ML/TF which should include "adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off." Regulation 6(1)(d) has therefore been amended to ensure there is no deficiency in our jurisdiction's obligations relating to group-wide programmes.

Clause 6 includes an amendment to the Eligible Introducer regime to ensure FATF Recommendation 17.1(c) is adequately implemented. This amendment seeks to ensure that the introducer is regulated and supervised by a Supervisory Authority or an overseas regulatory authority for, and has measures in place for compliance with, customer due diligence and record-keeping requirements in line with Recommendations 10 and 11.

As the jurisdiction is currently within the Caribbean Financial Action Task Force's Enhanced Follow-Up Process, its legal framework will be re-assessed to ensure it meets the technical compliance requirements of the FATF Methodology, including all updated FATF requirements.

As a result of challenges around the implementation of the requirements relating to virtual assets transfers identified by industry, and recognized by the FATF, the jurisdiction will delay the full implementation of these requirement (i.e. the new **Part XA**) to allow for further engagement with industry and relevant competent authorities. This engagement will be aimed at ensuring adequate and appropriate implementation of the FATF's standards on the part of industry, and effective supervision and monitoring by the supervisor. Upon completion of this engagement, these provisions will take effect by order of Cabinet. The remaining provisions are to take effect upon the publishing of the *Anti-Money Laundering (Amendment)(No.2) Regulations, 2020* in the Gazette.

The accompanying table below provides the AMLRs Working Group's summary of responses to the feedback received from industry.

Summary of responses to industry feedback on draft Anti-Money Laundering (Amendment) (No.2) Regulations, 2020

Consultation period closing 4 May 2020

Reg.	Association's Comment	AMLRs WG's Comment	Amendment to the Draft
4	Where it states "(2) Notwithstanding paragraph (1)(b), a virtual asset service provider shall undertake customer due diligence measures in respect of each one-off transaction it carries out.". maybe amend that to state "(2) Notwithstanding paragraph (1)(b), a virtual asset service provider shall undertake ***appropriate*** customer due diligence measures in respect of each one-off transaction it carries out." or insert some other similar adjective	The currently drafted wording is identical to that which is used in reg. 11 opening paragraph Including the word "appropriate" implies this is a different standard from that which is required in reg. 11 opening.	No amendment
6	At subsection (c) where it states "(da) that the introducer — (i) is supervised or monitored; and (ii) has measures in place, for compliance with customer due diligence and record keeping requirements; and". maybe amend that to instead state "(da) that the introducer — (i) is supervised or monitored ***by a local or overseas regulatory authority***; and (ii) has ***been formally***	The opening paragraph of 25 makes clear that the EI must be a person qualified under reg. 22(1)(d) – thus either regulated and supervised here in Cayman or by an overseas regulatory authority. The term "local regulatory authority" is not used in AMLRs. To make it clearer we have amended the draft by including the phrase "by a Supervisory	Amended

	assessed by the licensee to have appropriate measures in place, for compliance with customer due diligence and record keeping requirements; and" or other similar wording that sets more context.	Authority or overseas regulatory authority". Importing the term "*has been formally assessed by the licensee to have appropriate measures*" would add to industry's compliance burden and is not required by the FATF.	
8	Do the definitions of beneficiary virtual asset service provider, intermediary virtual asset service provider and originating virtual asset service provider extend to virtual asset service providers regulated outside the jurisdiction or only those regulated within Cayman?	The definition of a virtual asset service provider flows from the VASP Law – in the VASP Law, a VASP is any person under section 3 – i.e. it has to be registered or licensed in Cayman or is a licensee of the Monetary Authority that has received a waiver from the Monetary Authority (the beneficiary, originating and intermediary VASP are all VASPs). These entities are Cayman regulated. The AMLRs amendments include the term "obliged entities" which would be entities regulated abroad and providing virtual asset services.	No amendment
49C(1) and 49D(1)	At 49C(1) should the originating virtual asset service provider ('VASP') not also collect the address and/or identity of the beneficiary in order to perform appropriate checks? Otherwise the originating VASP risks not having insight into the overall commercial purpose of the transaction and may	FATF requires the originating VASP to collect identification and verification information on the originator but only identification information on the beneficiary. FATF requires the beneficiary VASP to collect identification and verification information on	No amendment

	not be able to form an appropriate opinion upon it. For the same reason should a beneficiary VASP at 49D(1) not also collect the address and/or identity of the originator? This seems to be inconsistent with the requirement listed at 49H(2) which talks to identifying information on both the originator and beneficiary.	the beneficiary but only identification information on the originator. This position is practical as the originator, for example, may not be in a position to collect the verification information from the beneficiary but this information is required to be captured on the beneficiary end. Not inconsistent with 49H(2). That provision means the beneficiary must be able to detect missing required information – in relation to the originator that means the name of the originator and where the originator uses an account, the account number of the originator. In relation to beneficiary information it would be all the information required under 49D.	
49M	This may just be the way this clause is drafted but it appears to suggest that there may be an obligation to file a SAR with a FIU outside the jurisdiction in addition to filing with the FRA. Is this correct, and if so is it not the job of the FRA to decide if reporting outside the jurisdiction is required?	This is required under FATF Methodology criterion 16.17(b)	No amendment
49M	Obligation of a virtual asset service provider to file suspicious activity report	This particular provision aims to address FATF criterion 16.17. The 3rd	No amendment

	49M. Where a virtual asset service provider, that controls both the originating virtual asset service provider and the beneficiary virtual asset service provider, possesses information that may suggest suspicious activity, it shall — (a) consider the information from both the originating virtual asset service provider and the beneficiary virtual asset service provider to determine whether a suspicious activity report should be filed by itself with the Financial Reporting Authority; and (b) ~~further to paragraph (a)~~ if a suspicious activity report is filed with the Financial Reporting Authority under paragraph (a), procure that either the originating virtual asset service provider and/or the beneficiary virtual asset service provider comply with their respective suspicious activity reporting obligations ~~file the suspicious activity report~~ in the country from or to which the transfer of virtual assets originated or was destined~~, respectively and make relevant transaction information available to the Financial Reporting Authority and the relevant authorities in the country from or to which the transfer of virtual assets originated or was destined.~~ [This last part is implicit in the SAR process].	draft of the FATF report examines this provision and indicates that in its assessment, the criterion has been "met". The assessors indicate that: "reg. 46 (a) and (b) of the AMLRs require MVTS that control both the ordering and beneficiary side of a wire transfer to (a) consider all information from both the ordering and beneficiary sides to determine whether a suspicious activity report should be filed; and (b) file a suspicious activity report in the country from or to which the suspicious wire transfer originated or was destined. (**met**)" Note that there is no reference in the report or in the FATF Methodology to <u>possessing information</u> or to <u>procure that a SAR be filed</u>. Importing this language could result in criticisms of this provision during the CFATF re-rating process and a potential downgrade.	

General	From the FATF Guidance, paras 111 to 119 dealing with the implementation of Recommendation 16 (Wire transfers). Recommendation 16 defines "wire transfers" as any transaction carried out on behalf of an originator through a financial institution by electronic means with a view to making an amount of funds available to a beneficiary person at a beneficiary financial institution, irrespective of whether the originator and the beneficiary are the same person. Para 112 states: "In accordance with the functional approach of the FATF Recommendations, the requirements relating to wire transfers and related messages under Recommendation 16 apply to all providers of **such** services, including VASPs that provide services or engage in **activities, such as VA transfers, that are functionally analogous to wire transfers**. Countries should apply Recommendation 16 regardless of whether the value of the traditional wire transfer or the VA transfer is denominated in fiat currency or a VA."	Note that the FATF requires all VA transfers to be subject to the wire transfer rules. This is set out in para 113 of the FATF's VA Guidance. FATF guidance clearly outlines what is a "transfer" in the context of virtual asset services: "In this context of virtual assets, transfer means to conduct a transaction on behalf of another natural or legal person that moves a virtual asset from one virtual asset address or account to another." The feedback appears to make a distinction between a transfer which is a "payment" and one which is not. The FATF does not make this distinction but is solely concerned with a transfer of value from an originator to a beneficiary. Para. 113 of the FATF's VA Guidance provides that: "the requirements of Rec. 16 should apply to VASPs whenever their transactions, whether in fiat currency or VA, involve: (a) a traditional wire transfer, or (b) a VA transfer or other related message operation between a VASP and	No amendment

	If a VASP engages in VA transfers analogous to wire transfers, the information requirements should apply. If a VASP doesn't, then the requirements shouldn't. Otherwise this will catch all utility token transfers/transactions/use even where the token isn't intended for payment, as under the definition of "virtual asset" any token at all theoretically "can" be used for payment or investment purposes. This will be very onerous for VASPs not engaging in financial services operations and would make the jurisdiction unattractive for such VASPs. A suggested resolution would be to give CIMA the flexibility to assess this based on the fact of each circumstance.	another obliged entity…countries should treat all VA transfers as cross-border wire transfers, in accordance with the Interpretive Note to Rec. 16…"	