



TURKS & CAICOS ISLANDS FINANCIAL SERVICES COMMISSION Guideline for Appointment of Regulatory Licensees¹ Compliance Officers, Money Laundering Compliance Officers and Money Laundering Reporting Officers

1. INTRODUCTION

- 1.1 This Statement of Guidance describes the approach taken by the Turks and Caicos Islands Financial Services Commission (“FSC” or “Commission”) in considering the appointments of a Compliance Officer (CO), Money Laundering Compliance Officer (MLCO) and Money Laundering Reporting Officer (MLRO).

It is issued pursuant to Section 43 of the Financial Services Commission Ordinance 2007 (“FSCO”) and outlines the requirements for qualifying and the obligations of the CO, MLCO and MLRO as specified in the various laws.

Section 43(4) of the FSCO provides that the Commission may take into account any failure to follow guidelines in determining whether there has been a contravention of the FSCO, any Financial Services Ordinance or of any Code issued under the FSC Ordinance.

Additionally the anti-money laundering and prevention of terrorist financing laws provides for fines, penalties and terms of imprisonment for the contravention of the provisions relating to the appointment and functions of the CO/MLCO/MRO.

¹This guideline relates to regulatory licensees as defined under Schedule 1 of the anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010 and is hereto attached as Appendix 1.

2. SCOPE

- 2.1 The Guidance will be applicable to all applications for approval by the Commission of COs, MLCOs and MLROs, pursuant to the FSCO and AMLR, and should be read in conjunction with the Commissions “Fit and Proper Test – Guidelines” issued August 2009.

3. LEGISLATIVE FRAMEWORK

- 3.1 The following pieces of legislation form the legislative framework for the Guidelines:
- 3.1.1 Financial Services Commission Ordinance 2007 (FSCO);
 - 3.1.2 The Proceeds of Crime Ordinance 2007 (as amended) (POCO);
 - 3.1.3 The Anti Money Laundering and Prevention of Terrorists Financing Regulations 2010 (AMLR); and
 - 3.1.4 The Anti Money Laundering and Prevention of Terrorists Financing Code 2011 (Code).

4. STATUTORY REQUIREMENTS

- 4.1 **APPOINTMENT OF COMPLIANCE OFFICER (CO)**
Section 31(2) of the FSCO requires licensees to appoint an individual approved by the Commission as its CO to have responsibility for:
- a) overseeing the licensee's compliance function;
 - b) reporting to the directors of the licensee with respect to the licensee's compliance function;
 - c) acting as the liaison between the licensee and the Commission with respect to the licensee's compliance function; and
 - d) discharging such other duties as may be specified in the Code.
- 4.2 **APPOINTMENT OF MONEY LAUNDERING COMPLIANCE OFFICER (MLCO)**
Regulation 21(1) of the AMLR requires every financial business to appoint an individual approved by the Commission as its MLCO. The principal function of the MLCO as per Regulation 21(4) of the AMLR is to oversee and monitor compliance with the POCO, all legislation in force concerning terrorist financing, the AMLR and the Code.
- 4.3 **APPOINTMENT OF MONEY LAUNDERING REPORTING OFFICER (MLRO)**
Regulation 22(1) of the AMLR requires every financial business to appoint an individual approved by the Commission as its MLRO. The principal function of the MLRO as per Regulation 22(1) of the AMLR is to receive and consider

internal money laundering and terrorists financing disclosures, consider whether a suspicious activity report should be made to the Reporting Authority and, submitting the suspicious activity report where it is decided that a report should be made.

4.4 **COMBINED FUNCTIONS**

Financial businesses, pursuant to Section 31(2) of the FSCO and Regulations 21(7) and 22(5) of the AMLR, may apply for one person to be appointed to fulfil the relevant functions of each of these Officers or a combination of these functions. The approval for appointment for any combination of appointments to one person shall be in the discretion of the Commission. This discretion will be exercised based on the size and complexity of the financial business and the anticipated work load of each officer.

5 CESSATION OF CO/MLCO/MLRO

- 5.1 Financial businesses must inform the Commission when an individual ceases to be the MLCO/MLRO of the business within 7 days. This requirement is set out in Regulation 21(6) and 22(4) of the AMLR.
- 5.2 Where an approved person ceases to be the MLRO the business is required to immediately appoint another individual as MLRO and further inform the Commission within 7 days of that appointment. This appointment may be temporary. The financial business must within 7 days thereafter file with the Commission a formal application for the appointment of a MLRO together with other relevant supporting documents for approval from the FSC. Temporary appointments shall not exceed a period of 60 days without the Commission's written approval.
- 5.3 Where an approved person ceases to be the MLCO, the business is required to appoint within 7 days another individual as MLCO and further inform the Commission within 7 days of the appointment. This appointment will be temporary. The financial business must within 14 days thereafter file with the Commission a formal application for the appointment of a new MLCO together with other relevant supporting documents for approval from the FSC. Temporary appointments shall not exceed a period of 60 days without the Commission's written approval.
- 5.4 Sections 5.1 and 5.3 above will also apply to COs.
- 5.5 A CO/MLCO/MLRO will cease to be approved:
 - 5.5.1 upon the revocation of approval by the Commission.

- 5.5.2 in such cases the Financial business will be required to submit a new application for the approval of a new CO/MLCO/MLRO.
- 5.6 The Commission may revoke the officer's approval for:
 - 5.6.1 Acting in contravention of the Ordinance, Regulations and/or Code;
 - 5.6.2 Failing the Commission's 'Fit and Proper' Guidelines;

6 CRITERIA

- 6.1 The AMLR and Code provide relevant criteria to be used in determining and assessing the acceptability of a MLCO/MLRO and these criteria will also be used for the assessment of the CO. Section 8 and 9 of the Code provides that the MLCO/MLRO of a financial business:
 - i. has the appropriate independence;
 - ii. has sufficient resources, including sufficient time;
 - iii. has a sufficient level of seniority and authority within the business;
 - iv. has regular contact with the Board;
 - v. has sufficient knowledge and experience; and
 - vi. is employed by the financial business and locally resident.

A. APPROPRIATE INDEPENDENCE

- 6.2 The CO/MLCO/MLRO should possess sufficient independence to perform his role objectively; have sufficient resources, including time, and have unfettered access to all business lines, support departments and information necessary to perform his functions effectively.
- 6.3 The CO/MLCO/MLRO must be able to effectively demonstrate that where other duties are performed they do not conflict with the duties of CO/MLCO/MLRO.

B. SUFFICIENT RESOURCES

- 6.4 The Commission will consider whether or not the CO/MLCO/MLRO has sufficient resources to fulfil the obligations of the office. The resources may include inter alia, time, personnel support and financing.
- 6.5 The Commission may approve an individual to function as the CO/MLCO/MLRO for multiple financial businesses within an organisational group. When considering this the Commission will take into account:

- 6.5.1 the respective demands of the roles, taking into account the size and nature of the business' activities; and
- 6.5.2 whether the individual will have sufficient time and resources to fulfill the roles effectively.

C. SUFFICIENT SENIORITY

- 6.6 The CO/MLCO/MLRO should have sufficient seniority within the Organizational structure of the licensee to undertake his responsibilities effectively and, in particular, to ensure that his requests, where appropriate, are acted upon by the financial business and its staff and his recommendations properly considered by the Board or Partners.

D. REGULAR BOARD CONTACT

- 6.7 The CO/MLCO/MLRO should report at least quarterly to the Board or to a Board appointed committee where relevant.

E. SUFFICIENT KNOWLEDGE AND EXPERIENCE

- 6.8 The CO/MLCO/MLRO should have a sound understanding of the money laundering and terrorist financing risks of the financial business and how the Anti-Money Laundering and Prevention of Terrorist Financing framework of The Turks and Caicos Islands applies to the business.
- 6.9 The CO/MLCO/MLRO must be fully aware of both his and the business obligations under the Proceeds of Crime Ordinance, Anti Money Laundering and Prevention of Terrorist Financing Regulations, Anti-Money Laundering and Prevention of Terrorist Financing Code, Counter-Terrorism Order, and the Anti –Terrorism Order and any other laws that may be enacted in relation to anti-money laundering and the prevention of terrorist financing or terrorism.
- 6.10 The CO/MLCO/MLRO must be able to demonstrate that he/she:
 - 6.10.1 holds a relevant professional qualification or attended courses relevant to his function; and/or
 - 6.10.2 has practical relevant experience in the financial services (this includes, banking/co-operatives, securities and insurance sectors) industry, and accounting or legal profession.

- 6.11 The CO/MLCO/MLRO should be able on an annual basis to demonstrate self-development in areas related to AML/CFT matters.
- 6.12 When temporary circumstances arise where the relevant business has limited or inexperienced compliance resource, the business must ensure that this resource is supported as necessary.

F. EMPLOYED BY THE FINANCIAL BUSINESS AND RESIDENT IN THE TCI

- 6.13 The CO/MLCO/MLRO should be an employee of the financial business or of a company in the same group as the financial business and shall be resident in the TCI.
- 6.14 The Commission may give consideration to the compliance function being centralized in another location; for example in the case of foreign branches or subsidiaries, provided that there is a locally approved officer who should be in a position to readily respond to the Commission.
- 6.15 Additionally, where the business has no employees in the TCI, then an employee of the local administrator should be appointed as its CO/MLCO/MLRO.
- 6.16 In exceptional cases the Commission will also consider requests for the Outsourcing of the CO/MLCO/MLRO function. Financial business must seek the prior approval of the Commission to enter into any outsourcing arrangement covering AML/CFT compliance function, or to vary, renew or extend such an arrangement. The outsourcing of CO/MLCO/MLRO functions will be considered on a case by case basis and shall be determined by inter alia the size and complexity of the financial business and any other consideration which the Commission may determine to be relevant.

7 SUBMISSION OF APPLICATION FOR APPROVAL

- 7.1 An application for approval of CO/MLCO/MLRO shall be made by the licensee and shall be accompanied with-
- a. Completed application form
 - b. Certified copies of Passport photo page
 - c. A detailed resume or curriculum vitae outlining the relevant qualifications and experience of the proposed CO/MLCO/MLRO
 - d. Evidence of AML/KYC Training
- In the absence of having both the experience and the training the Commission may grant temporary approval for a period of one year to provide evidence of training.

- e. Original Police Certificate
- f. References:
 - i. One (1) Professional reference; should be from a person who can verify the experience of the proposed CO/MLCO/MLRO;
 - ii. One (1) Financial reference; from a financial institution within the jurisdiction and addressed to the Commission; and
 - iii. Where the individual recommended for appointment is a resident in the TCI for less than six (6) months, the FSC requires original/notarized copies of the financial reference from the previous jurisdiction.

APPROPRIATE CERTIFIERS MAY INCLUDE:

- 7.2 The following are recognized certifiers pursuant to 7.1:
- a) A member of the judiciary
 - b) An officer of an embassy, consulate or high commission of the country of issue of documentary evidence of identity
 - c) A lawyer who is a member of a recognized professional body
 - d) An actuary who is a member of a recognized professional body
 - e) An accountant who is a member of a recognized professional body
 - f) A notary public or equivalent
 - g) A director, officer, or manager of a regulated entity or of a branch or subsidiary of a group headquartered in a well-regulated jurisdiction which applies group standards to subsidiaries and branches worldwide, and tests the application of and compliance with such standards.
- 7.3 The certifier shall be an independent person outside the firm.

APPENDIX 1



Regulatory Licenses

“Regulatory licence” means-

- (a) a licence issued under the Banking Ordinance;
- (b) a license issued under the Trustees Licensing Ordinance;
- (c) a licence issued under the company Management (Licensing) Ordinance;
- (d) a licence issued under the Mutual Funds Ordinance;
- (e) a licence issued under the Investment Dealers (Licensing) Ordinance;
- (f) a license issued under the Insurance Ordinance;
- (g) a license issued under the Money Transmitters Ordinance