



Sector Specific AML/CFT Guidance Notes: Private Trust Companies (‘PTCs’)

Whilst this publication has been prepared by the Financial Services Authority, it is not a legal document and should not be relied upon in respect of points of law. Reference for that purpose should be made to the appropriate statutory provisions.

1. Foreword

This guidance¹ is applicable to:

- businesses conducting activity that would require a licence under Class 5 of the Regulated Activities Order 2001, if they were not exempted by the Financial Services Exemptions Regulations 2011.

2. Introduction

The purpose of this document is to provide some guidance specifically for PTCs, and those providing services to them, in relation to anti-money laundering and countering the financing of terrorism (‘AML/CFT’). This document should be read in conjunction with both the [Anti-Money Laundering and Countering the Financing of Terrorism Code 2019](#) (‘the Code’) and the main body of the [Anti-Money Laundering and Countering the Financing of Terrorism Handbook](#) (‘the Handbook’). It should be noted that although guidance is not law, it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.

3. Applicability of the Proceeds of Crime Act 2008

Paragraph 2(6)(a) of schedule 4 to the [Proceeds of Crime Act 2008](#) (‘POCA’) states that the Code applies:

subject to sub-paragraph (13), engaging in any regulated activity within the meaning of the *Financial Services Act 2008*, whether or not an exemption specified in the Financial Services (Exemptions) Regulations 2011^[2], as those Regulations have effect from time to time and any instrument or enactment from time to time amending or replacing those Regulations, applies to that activity;

¹ Note that this guidance will be incorporated in the TCSP sector specific guidance when it is published.

² <https://www.iomfsa.im/media/1466/financialservicesexemptionsregs2011.pdf>

Therefore, it is important to note that the requirements of the Code apply to any activities that are exempted from the Financial Services Act 2008. This includes, PTCs which are acting by way of business and availing themselves of the regulatory exemption for PTCs³.

4. Responsibilities

All relevant persons must comply with the Code. Any relevant persons who are exempted from the [Financial Services Act 2008](#) but are caught by POCA (for example, PTCs) must comply with the Code in their own right and must be able to demonstrate their compliance. It is acceptable for a TCSP to provide resources for a relevant person (such as a PTC) or for work in relation to Code compliance to be delegated to a TCSP⁴. Where a relevant person delegates any aspects of AML/CFT to a TCSP the board must understand and document what services the TCSP is, and, more importantly, is not providing in relation to the relevant person's obligations under the Code.

Where a TCSP is assisting a relevant persons in meeting its obligations under the Code it is the Authority's expectation that a formal arrangement is put in place between the TCSP and the relevant person. Any arrangement in place should be governed by an agreement that clearly sets out the roles and responsibilities of each entity. The agreement should also clearly document how the relevant person will monitor the work of its delegate. Delegation without oversight is not effective, all delegated activities should have some level of effective upward reporting on a regular basis.

As per paragraph 4(3) of the Code, the ultimate responsibility for ensuring compliance with the Code remains that of the relevant person, regardless of any outsourcing or delegation that takes place.

³ Single Family Offices who are not acting by way of business are not caught by Schedule 4 to POCA and therefore do not have to comply with the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019; however, they must comply with the [Anti-Money Laundering and Countering the Financing of Terrorism \(Unregulated Trustees\) Code 2018](#).

⁴ Resources can include the adoption of the TCSP's policies and procedures, provided that consideration has been made regarding the appropriateness of this and the specific risks of that relevant person.