

Cayman's new AML/CFT regime

Q&A with Gary Smith

Why did the Cayman authorities need to revamp/update its existing AML regulations and what was the catalyst?

The new Anti-Money Laundering Regulations, 2017 of the Cayman Islands (AML Regulations), which came into force on 2 October 2017 and the Proceeds of Crime Law (2017 Revision) (PCL) which came into force in May 2017 have together expanded the scope of Cayman Islands anti-money laundering regime (AML), including application to investment funds generally and specifically to (i) private equity funds and other closed-ended funds (e.g. real estate funds) and (ii) structured finance vehicles that are not registered with the Cayman Islands Monetary Authority (CIMA).

The main aim behind the changes to the AML Regulations has been to more closely align Cayman Islands' AML regime to the Financial Action Task Force 2012 recommendations. The AML Regulations introduce a new risk-based approach to AML in the Cayman Islands, including requiring persons subject to the AML Regulations (Financial Service Providers) to take steps appropriate to the nature and size of their business to identify, assess, and understand its money laundering and terrorist financing risks in relation to a customer, the country or geographic area in which the customer resides or operates, the Financial Service Provider's products, service and transactions, and the Financial Service Provider's delivery channels.

Could you provide a few salient points on the gaps that have been addressed in the new AML regime?

The scope of the AML Regulations is still defined by reference to "relevant financial business". Persons undertaking "relevant financial business" in the Cayman Islands must comply with the requirements of the AML Regulations. The definition of "relevant financial business" that was included in



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previous versions of the anti-money laundering regulations has been removed from the AML Regulations and has instead been placed in Section 2 of the PCL. The definition continues to cover (emphasis added) "mutual fund administration or the business of a regulated mutual fund within the meaning of the Mutual Funds Law (2015 Revision)" which covers all funds registered with and regulated by CIMA. The definition had also covered and continues to cover investment managers licensed by or registered with CIMA (e.g. those who have applied for and obtained a SIBL Exemption). However Section 2 and Schedule 6 of the PCL now extends the meaning of "relevant financial business" to cover activities which are "otherwise investing, administering or managing funds or money on behalf of other persons."

The net effect of expanding the meaning of relevant financial business to include activities of "otherwise investing, administering or managing funds or money on behalf of other persons," is that now all unregulated investment entities (as well as regulated investment entities) are covered and will need to maintain AML procedures in accordance with the AML Regulations.

AML Procedures

Going forward all Cayman unregulated investment entities (as well as regulated investment entities) will be required to have the following AML procedures in place:

- identification and verification (KYC) procedures for its investors/clients;
- adoption of a risk-based approach to monitor financial activities;
- record-keeping procedures ;
- procedures to screen employees to ensure high standards when hiring;
- adequate systems to identify risk in relation to persons, countries and activities which shall include checks against all applicable sanctions lists;

- adoption of risk-management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification;
- observance of the list of countries, published by any competent authority, which are non-compliant, or do not sufficiently comply with the recommendations of the Financial Action Task Force;
- internal reporting procedures (i.e. appointment of a money laundering reporting officer and deputy money laundering reporting officer); and
- such other procedures of internal control, including an appropriate effective risk-based independent audit function and communication as may be appropriate for the ongoing monitoring of business relationships or one-off transactions for the purpose of forestalling and preventing money laundering and terrorist financing.

In order to allow unregulated investment entities not previously subject to the AML/CFT regime to implement appropriate procedures (or delegation arrangements) to comply, the AML Regulations have been amended to provide a grace period until 31 May 2018 within which to assess their existing AML/CTF procedures and to implement policies and procedures which are in compliance with the AML Regulations.

What are the enforcement powers that CIMA will be able to bring to bear for those entities who fail to comply?

The Monetary Authority (Amendment) Law, 2016 (the Amendment Law) which came into force on 15th December 2017 gives CIMA the power to impose administrative fines for non-compliance on entities and individuals who are subject to Cayman Islands regulatory laws and/or the AML Regulations.

For a breach prescribed as minor fine would be CI\$5,000 (approximately US\$6,000). For a breach prescribed as minor the Authority also has the power to impose one or more continuing fines of CI\$5,000 each for a fine already imposed for the breach (the "initial fine") at intervals it decides, until the earliest of the following to happen:

- a) the breach stops or is remedied;
- b) payment of the initial fine and all continuing fines imposed for the breach; or
- c) the total of the initial fine and all

continuing fines for the breach reaches CI\$20,000 (approximately US\$24,000).

For a breach prescribed as serious, the fine is a single fine not exceeding: (a) CI\$50,000 (approximately US\$61,000) for an individual; or (b) \$100,000 (approximately US\$122,000) for a body corporate. For a breach prescribed as very serious, the fine is a single fine of not exceeding: (a) CI\$100,000 (US\$122,000) for an individual; or (b) CI\$1,000,000 (US\$1,220,000) for a body corporate.

The Monetary Authority (Administrative Fines) Regulations, 2017, which came into force immediately after the Amendment Law came into force sets out, among other things, rules and guidance regarding the amount of fines, different categories of breaches, the criteria for exercising fine discretions, including procedures of imposing fines, appeals, payment and enforcement.

How would you assess the overall improvements made in the new AML regulations, vis-à-vis other global funds jurisdictions?

The AML Regulations are intended to more closely align Cayman Islands' AML regime to the Financial Action Task Force 2012 recommendations which are intended to set the standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The changes introduced by the AML Regulations enhances the Cayman Islands' AML regimes adherence to such international standards and its reputation as one of the premier offshore financial centres.

What advice would you give to fund managers who rely on their service providers to handle AML/KYC checks?

Fund managers should check (i) whether the AML regime being applied in respect of their Fund is the Cayman AML regime or the regime of jurisdiction recognised as having an equivalent AML regime, (ii) if it is the latter whether or not the relevant delegate is actually subject to the AML regime of that jurisdiction, and (iii) whether or not the delegate has the requisite personnel (in terms of numbers, training and experience) to maintain the AML / CFT procedures on the Fund's behalf. ■