

Guidance Note

AML Officers In The Cayman Islands

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Introduction

The Cayman Islands anti-money laundering regime includes the Proceeds of Crime Act (Revised), Terrorism Act (Revised), Proliferation Financing (Prohibition) Act (Revised), Anti-Money Laundering Regulations (Revised) and the Cayman Islands Monetary Authority's ("CIMA") Guidance Notes on the Prevention and Detection of Money Laundering ("ML"), Terrorist Financing ("TF") and Proliferation Financing ("PF") in the Cayman Islands, amongst others (the "Cayman AML Regime"). The Cayman AML Regime requires that Cayman Islands Financial Service Providers ("FSPs") appoint an AML Compliance Officer ("AMLCO"), Money Laundering Reporting Officer ("MLRO") and Deputy Money Laundering Reporting Officer ("DMLRO"), and each of those persons to comply with their specific roles and responsibilities.

AML Compliance Officer

The AMLCO is required to oversee the compliance function of the FSP. An FSP is required to appoint an AMLCO at the management level, who shall be the point of contact with the supervisory and other competent authorities. AMLCOs are required to have the authority and ability to oversee the effectiveness of FSPs' anti-money laundering/countering the financing of terrorism ("AML/CFT") systems, compliance with applicable AML/CFT legislation and guidance and the day-to-day operation of the AML/CFT policies and procedures.

An AMLCO must be a person who is fit and proper to assume the role and who:

- (1) has sufficient skills and experience;
- (2) reports directly to the Board of Directors ("Board") or equivalent;
- (3) has sufficient seniority and authority so that the Board reacts to and acts upon any recommendations made;
- (4) has regular contact with the Board so that the Board is able to satisfy itself that statutory obligations are being met and that sufficiently robust measures are being taken to protect the FSP against ML/TF risks;
- (5) has sufficient resources, including sufficient time and, where appropriate, support staff; and
- (6) has unfettered access to all business lines, support departments and information necessary to appropriately perform the AML/CFT compliance function.

An FSP may demonstrate clearly apportioned roles for countering ML/TF where the AMLCO (or other audit, compliance, review function):

- (1) Develops and maintain systems and controls (including documented policies and procedures) in line with evolving requirements;
- (2) Ensures regular audits of the AML/CFT programme;
- (3) Maintains various logs, as necessary, which should include logs with respect to declined business, politically exposed persons ("PEPs"), and requests from competent authorities particularly in relation to investigations;
- (4) Advises the Board of AML/CFT compliance issues that need to be brought to its attention;



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- (5) Reports periodically to the Board or Board committees (e.g. audit committee), as appropriate, on the FSP's systems and controls; and
- (6) Responds promptly to requests for information by the relevant competent authorities.

An FSP may designate its AMLCO to act as a MLRO or vice versa as far as the person is competent and has sufficient time to perform both roles efficiently. Where an individual is both an MLRO and AMLCO, that person should understand the roles and responsibilities.

Money Laundering Reporting Officer

Each FSP must designate a suitably qualified and experienced person as MLRO at management level, to whom suspicious activity reports (“SARs”) must be made by staff. FSPs must also designate a DMLRO, who should be a staff member of similar status and experience to the MLRO. In the absence of MLRO, the DMLRO shall discharge the MLRO functions.

The FSP should ensure that the person acting as MLRO/DMLRO:

- (1) is a natural person;
- (2) is autonomous (meaning the MLRO is the final decision maker as to whether to file a SAR);
- (3) is independent (meaning no vested interest in the underlying activity);
- (4) has and shall have access to all relevant material in order to make an assessment as to whether the activity is or is not suspicious; and
- (5) can dedicate sufficient time for the efficient discharge of the MLRO function, particularly where the MLRO/DMLRO has other professional responsibilities.

The primary duties of the MRLO (or the DMLRO in their absence) are to:

- (1) receive reports of any information or other matter which comes to the attention of a person carrying out relevant financial business, which gives rise to an actual knowledge or suspicion of ML/PF/TF;
- (2) consider and investigate such reports in light of all other relevant information to determine if the information or other matter gives rise to such knowledge or suspicion;
- (3) have access to other information which may assist in considering such report;
- (4) make prompt disclosures to the Cayman Islands Financial Reporting Authority (“FRA”) on the standard form if after considering a report there is knowledge or a suspicion of money laundering, proliferation financing or terrorist financing;
- (5) establish and maintain a register of money laundering, proliferation financing or terrorist financing reports made by staff, and
- (6) maintain a register of reports to the FRA.



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Delegation and Outsourcing

FSPs are permitted to delegate/outsource the performance of certain AML obligations on the basis that they:

- (1) maintain the requisite outsourcing policies and procedures;
- (2) assess associated risks (including the country risk) prior to entering into the proposed outsourcing arrangement;
- (3) conduct due diligence on the proposed outsourcing service provider (“OSP”) and also ensure that the OSP is fit and proper to perform the activity that is being outsourced;
- (4) ensure that the outsourcing agreement clearly sets out the obligations of both parties including a timeframe that the OSP reports regularly to the FSP, access to all the information or documents relevant to the outsourced activity maintained by the OSP is provided to the FSP, the OSP is required to file a SAR with the FRA in case of suspicions arising in the course of performing the outsourced activity;
- (5) ensure, where the outsourcing arrangement allows for sub-contracting, that while sub-contracting, the OSP follows the outsourcing standards equivalent to that of the FSP;
- (6) develop a contingency plan and a strategy to exit the arrangement in the event that the OSP fails to perform the outsourced activity; and
- (7) ensure that where the OSP operates from a country outside of the Cayman Islands in which the standards are lower when compared to the Cayman Islands, then the OSP should adopt the Cayman Islands’ standards. The same approach should be adopted in case of sub-contracting. Where the sub-contractor is from a country whose standards are lower when compared to the Cayman Islands, the subcontractor should adopt the standards of the Cayman Islands.

FSPs must not enter into outsourcing arrangements where access to data without delay is likely to be impeded by confidentiality, secrecy, privacy, or data protection restrictions.

Liability

Persons who act as an AML officer may be subject to personal liability for failure to carry out their functions or for certain illegal activities and the entities they act for may suffer reputational damage for any such failures. For example, if the MLRO/DMLRO fail to disclose to the FRA that they suspect or know that another person is engaged in criminal conduct are liable to a penalty that is a fine and/or imprisonment for up to 5 years. The Proceeds of Crime Act lists five primary offences: (i) concealing or transferring criminal property; (ii) entering into arrangements for the facilitation or use of criminal property; (iii) acquisition, possession or use of criminal property; (iv) failure to disclose a suspicion of criminal conduct; and (v) tipping off. The penalties for these offences range from liability on summary conviction to a fine of US\$6,000 or imprisonment for 2 years or both to liability on conviction on indictment for such offences, the maximum penalty is imprisonment for a term of 14 years or an unlimited fine, or both. In addition to the foregoing, CIMA may impose an administrative fund up to US\$1.2 million for breaches of the AML Regulations. The Cayman AML Regime is complex. As such, it is very important that the AML officers understand and carry out their roles in accordance with the requirements set out in the Cayman AML Regime and seek appropriate Cayman Islands legal advice.



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This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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Registration and AML Officers in the Cayman Islands