

# Guidance Note

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Anti-Money Laundering for Cayman Islands  
Funds

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## AML Obligations for Cayman Islands Funds

### Introduction

The principal legislation in the Cayman Islands which seeks to combat money laundering and the financing of terrorism is The Proceeds of Crime Act (2020 Revision) (the “PCA”) and The Anti-Money Laundering Regulations (as amended) (the “Regulations”).

The Regulations were brought into force on 9 January 2020 and are accompanied by the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands issued on 13 December 2017, as amended (the “Guidance Notes”).

Between the PCA, the Regulations and the Guidance Notes (together, the “AML Measures”), there are clear and detailed requirements on those conducting “*relevant financial business*” and the purpose of this note is to draw your attention to some of the principal requirements. This note is not exhaustive and specific legal advice should be sought to ensure that you are in compliance with the AML Measures.

### Are you carrying out “Relevant Financial Business”?

The PCA defines “*relevant financial business*” as the business of engaging in one or more of a list of various activities but, crucially, from a Fund’s perspective, includes:-

- acceptance of deposits and other repayable funds from the public;
- money or value transfer services;
- issuing and managing means of payment;
- participation in securities issues; and
- otherwise investing, administering or managing funds or money on behalf of other persons.

It will of course depend on the specific terms of the Fund as to whether or not it constitutes “*relevant financial business*”. However, generally speaking, it would be prudent to assume that the Fund would constitute “*relevant financial business*” and to comply with the AML Measures accordingly. Even if the Fund does not technically fall within the definition of “*relevant financial business*” it would, in our view, be of significant comfort to investors, banks and other service providers of the Fund if such measure were adopted and complied with in any event.



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## If the business of my fund does constitute “Relevant Financial Business”, what do I need to do to comply with the AML measures?

**Appoint an Anti-Money Laundering Compliance Officer (“Compliance Officer”)** – Regulation 3(1) of the Regulations requires any person carrying out relevant financial business to designate a person at the managerial level as the Compliance Officer. The Compliance Officer shall (i) ensure that measures set out in the Regulations are adopted by the person carrying out relevant financial business; and (ii) function as the point of contact with competent authorities for the purpose of the Regulations.

**Appoint a Money Laundering Reporting Officer (“MLRO”) and a Deputy MLRO (“DMLRO”)** – Regulation 33(1) of the Regulations requires any person carrying out relevant financial business to designate a person at the managerial level as the money laundering reporting officer and an alternate to such officer. The MLRO is the person to whom a suspicious activity report is to be made. The DMLRO is required to discharge the functions of the MLRO in its absence.

**Maintain various procedures in relation to the business** – A person that conducts relevant financial business is required to maintain the following procedures:-

- **Identification and verification procedures** – Pursuant to Part IV of the Regulations details specific requirements in relation to customer due diligence. In particular, a person carrying out relevant financial business shall:-
  - not keep anonymous accounts or accounts in fictitious names;
  - undertake customer due diligence measures when (i) establishing a business relationship, (ii) carrying out a one-off transaction valued in excess of US\$15,000 (whether in one transaction or a series of smaller transactions), (iii) carrying out a one-off transaction that is a wire transfer, (iv) there is a suspicion of money laundering or terrorist financing; or (v) the person has doubts about the veracity or adequacy of previously obtained customer identification data;
  - identify a customer and verify their identity using reliable, independent source documents, data or information;
  - verify that a person purporting to act on behalf of a customer is properly authorised and identify and verify their identity;
  - identify a beneficial owner and take reasonable measure to verify the identity of the beneficial owner;
  - understand and obtain information on the purpose and intended nature of the business relationship;
  - conduct ongoing due diligence on a business relationship including: (i) scrutinizing transactions undertaken throughout the course of the business relationship to ensure that transactions being conducted are consistent with the person’s knowledge of the customer, the customer’s business and risk profile;



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and (ii) ensuring that documents, data or information collected under the customer due diligence process is kept current and relevant; and

- o put in place risk-management systems to determine whether a person or beneficial owner with whom that person has a business relationship is a politically exposed person, family member or close associate.

- **Adopt a risk-based approach** – As set out in Part III of the Regulations, a person carrying out relevant financial business is required to take steps appropriate to the nature and size of the business to identify, assess and understand its money laundering and terrorist financing risks in relation to their customers, the area where the customer resides or operates, the products, services and transactions provides and the delivery channels. Of particular relevance to a Fund is a requirement that a person carrying out relevant financial business in respect of new products and business practices, new delivery mechanisms and new or developing technologies shall: (i) undertake assessment of risk prior to the launch or use of the new products and business practices, new delivery mechanisms and new or developing technologies; and (ii) take appropriate measures to manage and mitigate risks.
- **Screen employees** – Prospective and current employees should be screened to ensure high standards.
- **Record-keeping procedures** – Part VIII of the Regulations requires various records and logs to be kept in relation to business relationships and customers and shall ensure that all customer due diligence information and transaction records are available without delay upon request by competent authorities.
- **Sanctions Compliance** – You are required to maintain adequate systems to identify risk in relation to persons, countries and activities which shall include checks against all applicable sanction lists.
- **Risk-management procedures** – You are required to adopt risk-management policies and procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.
- **Non-compliant countries** – You must observe 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** – Regulation 34 of the Regulations requires procedures to be in place for the reporting of suspicious activity etc.
- **Other procedures and controls** – You must maintain 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 the business relationships or one-off transactions for the purpose of forestalling and preventing money laundering and terrorist financing.



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**Training of Employees** – You are required to make employees aware of the procedures referenced above and to provide training in the recognition and treatment of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering. A training log in respect of all senior staff and directors (specifically in respect of Cayman AML laws) and training plan for annual training should be adopted and approved.

## How do you ensure compliance with the AML measures?

An entity which operates a Fund should consider whether its operations fall within the definition of 'relevant financial business' and, if so, it should consider taking the following steps:-

- **Review its existing customer identification/KYC procedures** – The entity may already be conducting customer identification/KYC procedures (whether by itself or through a delegate). The entity should review this procedure (or check with the delegate who conducts these procedures on behalf of the entity) to ensure compliance with the Regulations and, where the Fund engages delegates, consider expanding the scope of such delegation to include compliance with the Regulations.
- **Appoint the required officers** – The Regulations would require a Fund to appoint a Compliance Officer, MLRO and a Deputy MLRO. These officers can also be provided by a delegate.
- **Adopt and maintain various policies and logs** – an anti-money laundering manual should be adopted, as well as ancillary logs and reports including but not limited to: competent authority enquiries log, a complaints log, a declined business log, a SAR log, and a PEP log.
- **Engage a service provider to ensure compliance with the AML Measures** – The Regulations enable compliance to be delegated by an entity to a service provider. We can facilitate introductions to third party providers if this would be of assistance



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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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## Anti-Money Laundering for Cayman Islands Funds

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