

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Cayman Islands: AML

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**Member of FATF?** No (Member CFATF).**On FATF blacklist?** No.**Member of Egmont?** Yes.**Anit-money laundering background — overview of country risks**

The Cayman Islands is a leading international financial centre with a robust anti-money laundering regulatory structure. The Cayman Islands' anti-money laundering legislation has been carefully crafted and diligently upgraded to ensure that the jurisdiction remains in compliance with the highest of international standards. Most importantly, the highly skilled professionals in the Cayman Islands, including lawyers, accountants, auditors and fund managers and administrators, cultivate a strong culture of compliance, taking very seriously the negative impact (both in terms of direct and reputational damage) that regulatory failures would bring to the jurisdiction.

Legislative framework

The Proceeds of Crime Act (2020 Revision) (as amended) (the PCA) is the primary legislation in the Cayman Islands intended to combat the activity of money laundering. The PCA reflects the "forty plus nine" recommendations formulated by the Financial Action Task Force (FATF), and has as its primary objective, the development and improvement of the Cayman Islands' legal systems and mechanisms to counter the laundering of drug trafficking money and other criminal proceeds.

The Anti-Money Laundering Regulations (2020 Revision) (as amended) (the Regulations) are promulgated under the PCA and apply to persons engaged in relevant financial business. In addition, the Cayman Islands Monetary Authority (CIMA) has published Guidance Notes on the Prevention and Detection of Money Laundering Terrorist Financing and Proliferation Financing in the Cayman Islands (as amended) (the Guidance Notes). The PCA, the Regulations and the Guidance Notes combine to create a comprehensive, robust and modern anti-money laundering and anti-terrorist financing legislative regime.

Regulators and monitoring authorities

CIMA is responsible as part of its regulatory function, to monitor compliance with the PCA, the Regulations and the Misuse of Drugs Act (2017 Revision) which is concerned with drug trafficking and the laundering of its proceeds. The Guidance Notes give practical advice to financial services providers in the Cayman Islands on the prevention and detection of money laundering and terrorist financing, and concerning counter proliferation financing. The failure to comply with the Guidance Notes is not, in itself, an offence, however, it will be taken into account in assessing whether or not an offence under the PCA has occurred or whether a relevant financial business has taken all reasonable steps to comply with the AML Regulations.

The PCA also creates and sets out the obligations of the Financial Reporting Authority (FRA) which is the financial intelligence unit established in the Cayman Islands to receive, analyse and take action with respect to reports of suspicious activities.

FRA contact*Financial Reporting Authority**133 Elgin Avenue, George Town. Grand Cayman**Tel: +1-345-945-6267 Fax: +1-345-945-6268*

The Financial Crime Investigation Unit (FCIU) is a specialist unit dedicated to investigating criminal offences related to money laundering, the financing of terrorism and fraud. The FCIU works with the Office of the Director of Public Prosecutions to pursue convictions in complex cases.

The Cayman Islands Government also has an Anti-Money Laundering Unit which is the secretariat for the Anti-Money Laundering Steering Group (AMLSG) which is the AML/ CFT policy-making body for the Cayman Islands; it also chairs the Inter-Agency Coordination Committee. The AMLSG is the governing body responsible for the general oversight of AML/ CFT policy in the Cayman Islands and is responsible for the general administration of the FRA, for promoting effective collaboration between regulators and law enforcement agencies and for monitoring interaction and co-operation with overseas financial intelligence units.

Proceeds of Crime Act: Offences

Under the PCA, five primary offences are defined:

- Concealing, disguising, converting, transferring or removing criminal property from the Cayman Islands;
- Entering into arrangements for the facilitation of the acquisition, retention, use or control of criminal property;
- Acquisition, possession or use of criminal property;
- Failure to disclose a suspicion of criminal conduct; and
- Tipping off.

"Criminal conduct" is defined as conduct which constitutes an offence in Cayman or would constitute an offence in the Cayman Islands if it occurred there. Property is "criminal property" if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or in part and whether directly or indirectly) and the alleged offender knows or suspects that it constitutes or represents such benefit.

Money laundering

A person commits an offence if he conceals, disguises, converts, transfers or removes from the Cayman Islands criminal property; enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person; or acquires, uses or has possession of criminal property.

Failure to report

A person commits an offence if he knows or suspects (or has reasonable grounds for knowing or suspecting) that a person is engaged in criminal conduct, the knowledge or suspicion came to him in the course of business in the regulated sector or other trade, profession, business or employment, and disclosure is not made to a nominated officer or the FRA as soon as is practicable. Certain statutory defences apply.

Predicate offences

The offences hinge on the notion of "criminal property", which is defined as property that constitutes a person's benefit from any "criminal conduct" or property that represents such a benefit (in whole or in part, and whether directly or indirectly) and the alleged offender knows or suspects that it constitutes or represents such a benefit. Criminal property includes terrorist property. "Criminal conduct" is defined in the PCA as conduct which constitutes an offence in the Cayman Islands or would constitute an offence in the Cayman Islands if it occurred there. Further, a money laundering offence is not committed if the person knows, or believes on reasonable grounds, that the relevant "criminal conduct" occurred outside of the Cayman Islands and that the relevant conduct was not, at the time it occurred, unlawful under the criminal laws then applying in that country and not of a description prescribed by an order made by the Attorney General.

Is foreign tax evasion a predicate offence?

The Penal Code (2019 Revision) includes a tax offence in the Cayman Islands, which forms a predicate for money laundering. The PCA provides that criminal conduct, for the purposes of money laundering, can include conduct committed overseas, as long as it would be an offence under a Cayman Act. Accordingly, foreign tax evasion and equivalent tax crimes are reportable in the Cayman Islands.

Anti-Corruption Act

The Anti-Corruption Act (2019 Revision) sets out extensive local and international corruption offences and establishes the Anti-Corruption Commission (the "Commission"). It criminalises corrupt behaviour, including the bribery of public officials and members of the Parliament, frauds on the government, election fraud, breach of trust by a public officer or member of the Parliament, selling or purchasing office, influencing or negotiating appointments to office, false claims by public officers, abuse of office, non-disclosure of conflicts of interest, failure to report bribes and solicitation by public officials, illegal secret commissions, making false statements to the Commission and bribing a foreign public officer.

Anti-Terrorism

The Terrorism Act (2018 Revision) makes it an offence to provide or receive instruction or training (or invite others to do the same) in the making or use of firearms, explosives or chemical, biological or nuclear weapons; direct activities of a terrorist organisation; possess an article for the purpose of committing, preparing or instigating an act of terrorism; collect, record or possess information likely to be



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useful to a person committing or preparing an act of terrorism; use, solicit or possess "terrorist property"; and organise or participate in an act of terrorism or contribute to a group in furtherance of terrorism. "Terrorist property" is defined as property that is the proceeds of, or used in, or intended or allocated for use in, the financing of acts of terrorism.

The offence of failing to disclose under the Terrorism Act arises where a person has information which may be of assistance in preventing the commission of terrorism or securing the arrest or prosecution of a person for an offence under the Act, or where a person believes or suspects that another has committed a terrorism offence, and that knowledge or suspicion comes to his attention in the course of his trade, profession, business or employment and the person fails to report it as soon as is reasonably practicable. Schedule 1 of the Act also prescribes an offence where a person fails to disclose information that came to him in the course of a business in the regulated sector.

Anti-Proliferation Financing

The Proliferation Financing (Prohibition) Act, 2017 (PFPA) prescribes that it is an offence for any person to provide funds and economic resources to fund unauthorized proliferation activities; or to enter into or become concerned in an arrangement which that person knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of funds and economic resources to fund unauthorized proliferation activities.

The FATF defines proliferation financing as the payment for goods and services which are used, in whole or in part, to enable the manufacture, acquisition, possession, developing, export, transshipment, brokering, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials in contravention of national laws or international obligations. Proliferation includes technologies and dual-use goods which may be used for non-legitimate purposes, software, expertise and services in support of any part of the procurement process. Financing can include financial transfers, mortgages, credit lines, insurance services, middlemen services, trusts and corporate services and company formation.

Financial Sanctions

Sanctions orders are extended by Overseas Territory Orders in Council to the Cayman Islands to implement sanctions regimes executed by the United Nations Security Council, the European Union and the United Kingdom Government. However, the Cayman Islands can also impose its own financial sanctions and restrictions under the Terrorism Act and the PFPA. Failure to comply with financial sanctions legislation or to seek to circumvent its provisions is a criminal offence.

Penalties

Money Laundering

A person guilty of an offence is liable on summary conviction to a fine of US\$6,004 or imprisonment for a term of two years or to both, or on conviction on indictment, to imprisonment for a term of 14 years or to an unlimited fine or both.

Failure to report

A person guilty of the offence of failing to disclose is liable on summary conviction to imprisonment for a term of two years or a fine of US\$6,004 or both, or on conviction on indictment, to imprisonment for a term of five years and an unlimited fine, or both.

Tipping off

The offence of tipping off results in liability to imprisonment for a maximum term of two years or a fine of US\$6,004 or both on summary conviction, or five years' maximum imprisonment and unlimited fine or both on indictment.

Bribery

Bribery of a foreign public official is an offence which attracts a penalty of up to 14 years imprisonment on indictment. Conspiracy, attempts and incitement to commit an offence as well as aiding, abetting, counselling and procuring the commission of an offence are also crimes.

Terrorism

Penalties for soliciting, using or possessing terrorist property, or arranging for property to be used for terrorist purposes: on summary conviction, two years' imprisonment and/or a U.S. \$4,803 fine; on indictment, 14 years' imprisonment and/or unlimited fine. Penalties for failing to report: on summary conviction, six months' imprisonment and/or a U.S. \$4,803 fine; on indictment, five years' imprisonment and/or unlimited fine.

Proliferation Financing

Proliferation financing constitutes a money laundering offence for the purposes of the PCA as laid out above.

Financial Sanctions

Sanctions under the PFPA for failing to freeze funds and economic resources are a fine of US\$60,975 on summary conviction or a fine of US\$84,087 or imprisonment for a term of three years, or both, on conviction on indictment. Failing to report the details of frozen funds or economic resources or actions taken in compliance with the prohibition requirements of the relevant Security Council measures and sanctions, including attempted transactions, will result in a US\$12,195 fine on summary conviction.



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Under the Terrorism Act, similar offences carry on conviction of indictment a maximum of seven years imprisonment, a fine, or both. On summary conviction, a fine of up to US\$12,195 may be imposed or a maximum of twelve months imprisonment, or both.

Forfeiture

The Director of Public Prosecutions may apply for the forfeiture of the whole or any part of cash that has been seized and detained under the PCA. The Court may make an order for forfeiture if it is satisfied that the cash is recoverable property or is intended for use in unlawful conduct. Restraint, receivership and recovery procedures are also set out in the PCA.

Reporting and compliance requirements

Any person in the regulated sector must appoint a Money Laundering Reporting Officer. The term "regulated sector" is defined in Schedule 4 of the PCA to mean business regulated by any one or more of the Acts listed below, or any person who carries on any one or more of the following activities regulated under the Acts:

- Banks and Trust Companies Act (2020 Revision) (as amended);
- Building Societies Act (2020 Revision) (as amended);
- Companies Management Act (2018 Revision);
- Cooperative Societies Act (2020 Revision) (as amended);
- Insurance Act, 2010 (as amended);
- Money Services Act (2020 Revision) (as amended);
- Mutual Funds Act (2020 Revision) (as amended);
- Securities Investment Business Act (2020 Revision) (as amended);
- Dealing in goods by way of business (including dealing as an auctioneer) where a transaction involves a total cash payment of US \$18,012 or more; and
- Any other acts that may be prescribed by regulations made under section 46 of the Monetary Authority Act (2020 Revision) (as amended).

The Regulations place additional legal and administrative requirements on entities that conduct "relevant financial business". Any person carrying out relevant financial business must designate an Anti-Money Laundering Compliance Officer (AML Compliance Officer). The AML Compliance Officer ensures that the Regulations are adopted and followed and is the point of contact with competent authorities. "Relevant financial business" is defined broadly in the PCA and includes:

- Banking or trust business carried on by a person who is a licensee under the Banks and Trust Companies Act;
- Acceptance by a building society of deposits made by any person (including the raising of money from members of the society by the issue of shares);
- Cooperatives licensed under the Cooperative Societies Act;
- Insurance business and the business of an insurance manager, an insurance agent, or an insurance broker within the meaning of the Insurance Act;
- Mutual fund administration or the business of a regulated mutual fund regulated under the Mutual Funds Act;
- Company management as defined in the Companies Management Act; and
- Any of the activities set out in Schedule 6 of the PCA:
 - Acceptance of deposits and other repayable funds from the public;
 - Lending;
 - Financial leasing;
 - Money or value transfer services;
 - Issuing and managing means of payment;
 - Financial guarantees and commitments;
 - Trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferrable securities; or commodity futures trading;
 - Participation in securities issues and the provision of financial services related to such issues;
 - Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
 - Money broking;
 - Individual and collective portfolio management and advice;
 - Safekeeping and administration of cash or liquid securities on behalf of other persons;
 - Safe custody services;
 - Financial, estate agency (including real estate agency or real estate brokering), legal and accounting services provided in the course of business relating to – the sale, purchase or mortgage of land or interests in land on behalf of clients or customers; management of client money, securities or other assets; organisation of contributions for the creation, operation or management of companies; management of bank, savings or securities accounts; and the creation, operation or management of legal persons or arrangements and buying and selling of business entities;
 - Undertaking property development under the Trade and Business Licensing Act and subsequently selling that property, or investing in property, without using a real estate agent or broker;



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The services of listing agents and broker members of the Cayman Islands Stock Exchange as defined in the CSX Listing Rules and the Cayman Islands Stock Exchange Membership Rules respectively;
The conduct of securities investment business;
Dealing in precious metals or precious stones, when engaging in a cash transaction of U.S. \$18,012 or more;
The provision of registered office services to a private trust company by a company that holds a trust licence under the Banks and Trust Companies Act;
Otherwise investing, administering or managing funds or money on behalf of other persons;
Underwriting and placement of life insurance and other investment related insurance;
Providing virtual asset services; and
Operating a single family office.

In conducting relevant financial business, a person is required to maintain client identification and verification procedures and adopt a risk-based approach to monitor financial activities, including categories of activities that are considered to be high risk, procedures to screen employees to ensure high standards when hiring, appropriate record-keeping procedures and adequate systems to identify risk in relation to persons, countries and activities including checks against all applicable sanctions lists.

Entities must also adopt risk-management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification, observe the list of countries, published by any competent authority, which are non-compliant or do not sufficiently comply with the recommendations of the FATF, establish internal reporting procedures for suspicious transactions, and have in place internal controls and communication procedures which are appropriate for the purposes of forestalling and preventing money laundering. Such businesses are also required to have in place adequate training for staff on their obligations under the Act with respect to money laundering. The Regulations describe in some detail the exact nature of these requirements and the form that the procedures should take.

The Regulations set out specific guidelines relating to record-keeping procedures that must be maintained by a person carrying out relevant financial business. Customer due diligence information and transaction records must be made available without delay upon request by competent authorities. Records must be kept for at least five years.

Failure to comply with the requirements of the Regulations constitutes an offence punishable on summary conviction to a fine of five hundred thousand dollars or on indictment to imprisonment for two years and a fine. Where an offence is committed by a company or partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary, partner or similar officer, such person shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly, in addition to the company or partnership.

Administrative regime

The Monetary Authority Act (2020 Revision) (as amended) Part VIA allows CIMA to impose administrative fines for breaches of provisions of various acts, regulations and rules set out in Schedule 1 of the Monetary Authority (Administrative Fines) Regulations (2019 Revision) as amended. There are three categories of breach: 'minor', 'serious' or 'very serious'. Breaches are punishable with a non-discretionary or discretionary fine, depending on the severity of the breach, and fines range from US\$6,004 to US\$120,081 for individuals and up to US\$1,200,813 for corporate entities.

Bearer shares

Section 231A of the Companies Act prohibits a company incorporated under the Act from issuing, converting or registering bearer shares. The prohibition stems from the Companies (Amendment) Act, 2016 which took effect in May 2016 and is part of a series of legislative actions being taken by the Cayman Islands Government to assist global efforts in increasing transparency.

The above is a high level overview of certain aspects of anti-money laundering acts and regulations in the Cayman Islands and should not be regarded as comprehensive or as legal advice.

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