

# BDO KNOWS: REGULATORY COMPLIANCE

## THE CAYMAN ISLANDS ANTI-MONEY LAUNDERING REGULATIONS, 2020

### WHAT IS REGULATORY COMPLIANCE?

Regulatory compliance is an establishment's adherence to laws, regulations, and specifications relevant to its business processes. Breach of regulatory compliance frequently results in legal punishment, including fines.

### WHY IS REGULATORY COMPLIANCE SO IMPORTANT?

The regulatory environment is continually evolving, and the compliance target is steadily moving. In many organizations, regulatory compliance management has become a prominent function within the business, and rapid growth has led to the creation of various compliance management positions. One of the primary purposes of these roles is to employ individuals whose sole focus is to ensure organizations comply with rigorous, convoluted legal mandates, applicable laws and regulations.

### SUMMARY

In recent years, the Cayman Islands has significantly expanded its anti-money laundering legislative framework. The Money Laundering Regulations (2018 Revision) have recently been replaced by The Anti-Money Laundering Regulations, 2020 ("AML Regulations") on 9 January 2020. The AML Regulations provide enhancements to the existing anti-money laundering and counter-terrorist financing ("AML/CTF") framework, which reflects international standards, which is reflected in the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands ("the Guidance Notes", 5 June 2020). The AML Regulations applies to "relevant financial businesses," meaning that both regulated and unregulated investment entities, insurance entities, and finance vehicles will now be subject to the AML Regulations and the mandatory procedure obligations. The AML Regulations is closely aligned with the Financial Action Task Force ("FATF") recommendations, which reflects a risk-based approach.

### DETAILS

#### *Background*

Under the Anti-Money Laundering Law (2020 Revision), Businesses are required to keep records, perform staff training, report suspicious activities, implement internal control procedures, and assign an MLRO (Money Laundering Reporting Officer) and a DMLRO (Deputy Money Laundering Reporting Officer). Requirements relating to the compliance systems include new requisites to screen employees upon hire and maintain adequate systems to identify risks related to persons, countries, and activities. These systems must include checks against all sanctions lists, as well as, countries that are not in compliance with the FATF recommendations. Financial sanctions imposed in the Cayman Islands are the same as those imposed in the UK by the HM Treasury Office of Financial Sanctions Implementation (OFSI). Anyone found on this list is deemed to be a "designated person", and it is the responsibility of the relevant institution to ensure proper steps are taken.

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An comprehensive set of procedural requirements are now in place (Proceeds of Crime Law 2020 revision) including the adoption of risk rating policies and procedures. These policies and procedures will require the owners and/or beneficial owners of a business to take appropriate steps, such as identifying and assessing-money laundering and terrorist financing risks in relation to their customers and the country in which the customers reside or operate.

Owners or businesses assessed as high risk would require enhanced due diligence. Part VII of the AML Regulations address procedures that are applicable to politically exposed persons ("PEPs") and their family members and close associates. There is also a specific requirement to conduct enhanced customer due diligence on a customer or business that is from a country with deficiencies in its AML/CTF regime. Where a customer or business has been identified as low risk, persons conducting relevant financial business are permitted to apply simplified due diligence. In order for a customer or business to be identified as low risk, they must be consistent with the findings of the national risk assessment, or of a Supervisory Authority, such as the Cayman Islands Monetary Authority ("CIMA")

Any person who breaches the AML Regulations is deemed as committing an offense and is liable to a conviction and a fine up to CI\$500,000 (approximately \$600,000 USD) or on indictable conviction with an unlimited fine and imprisonment for up to two years. In addition, under amendments to the Monetary Authority Law (2020 Revision) and proposed Monetary Authority (Administrative Fines) Regulations, 2020, the Financial Reporting Authority (FRA) have the power to impose administrative fines for non-compliance with the AML Regulations. With the expansion of the AML Regulations to investment entities that were not previously in-scope of the Guidance Notes and the additions to the FATF principles, there will be many steps needed to clarify and interpret the legislation. Our aim at BDO is to ensure relevant financial businesses have the right compliance programs and robust systems in place to manage ML/TF risk in accordance with the Cayman Islands Anti-Money Laundering Regulations. The AML Regulations (2020 Revision) PART III stipulates that a person carrying out relevant financial business shall take steps appropriate to the nature and size of the business to identify, assess, and understand its money laundering and terrorist financing risks.

In the context of ML/TF, relevant financial businesses should apply a risk-based approach to ensure risk mitigation. A risk assessment should be taken in relation to products, services, delivery channels, geography, a person and their business relationship, and other relevant factors. Client identification and verification requirements and ongoing monitoring is also considered a critical area of the risk assessment process for the purpose of preventing, countering and reporting money laundering, terrorist financing

and proliferation financing and such procedures allowing for the identification of assets subject to targeted financial transactions applicable to the Cayman Islands sanctions list. It is a crucial exercise to assess and mitigate the ML/TF risk. Risks that have been identified can change or evolve over time as new products or threats enter your business context. It is important to keep customer information, beneficial ownership, and business relationship information up to date in accordance with the level of risk accessed. Additionally, your risk-based approach should be re-assessed and updated when the risk factors change.

The Anti-Money Laundering Regulations (2020 Revision) PART VIII and Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (2020 Revision), 5 June 2020, PART II section 8 mandates the importance and effectiveness of record-keeping procedures. It is imperative to ensure records relating to the verification of identity is a description of the nature of all evidence collected relating to the identity of the subject. Financial Service Providers should keep all necessary records of identifications, account files, business correspondence, and transactions for a minimum of 5 years after termination to be able to comply swiftly with information requests from the competent authorities.

Financial Service Providers are required to ensure mitigation of risks of ML/TF to which the firm is subject by performing employee screening and training. Employees should be assessed based on their knowledge, skills, and expertise, as well as their conduct and integrity. Screening obligations should be applied in proportion to the potential risk associated with ML/TF in relation to the business, and if there's a particular risk associated with the individual positions. One of the key areas of keeping in compliance with Cayman AML Regulations is to ensure employee training is kept up to date. It is paramount that all relevant staff received frequent training in accordance with section 5 of AML Regs. Employees should be fully educated on AML/CFT systems, policies, and programmes. Staff should be trained on an annual basis, and/or where there are changes to applicable laws and/or legal requirements or significant changes to the FSP business operations.

BDO's Risk Advisory Services (RAS) - Regulatory Compliance practice provides wide ranging regulatory compliance services. In particular with relevant financial businesses, our professionals have extensive experience in advising, developing, and implementing compliance programs to ensure compliance with the Cayman Islands Anti-Money Laundering Regulations and other laws and requirements. Leveraging our well-versed knowledge and expertise of Cayman Islands AML requirements and regulatory trends, our professionals are well-equipped to help you meet your organization's specific compliance needs.



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