

Cayman Islands AML developments:

What the alternative funds
industry needs to know

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The Cayman Islands Monetary Authority (CIMA) recently added additional clarity to developments in the Anti-Money Laundering (AML) regime that will impact financial service providers. Compliance with these changes will require immediate action from CIMA-regulated and unregulated funds.

Developments to the Anti-Money Laundering framework

Revisions to The Proceeds of Crime Law and the Anti-Money Laundering Regulations (AMLRs) require funds registered under the Mutual Funds Law to appoint an individual to serve in each the following three capacities:

- ▶ Money Laundering Reporting Officer (MLRO)
- ▶ Deputy Money Laundering Reporting Officer (DMLRO)
- ▶ Anti-Money Laundering ML Compliance Officer (AMLCO)

The AMLRs and Guidance Notes on the Prevention and Detection of Money Laundering/Terrorist Financing (the Guidance Notes) have recently been clarified to state that all regulated entities providing relevant financial business are required to appoint natural persons who are qualified to the three roles. The Guidance Notes also state that a person can perform two of the three roles, e.g., the MLRO can also serve as the AMLCO, provided the person has sufficient time to perform both roles. Further, for regulated funds, persons named to the roles must be filed with CIMA. (Note for unregulated funds the same filing requirement does not presently exist).

Existing regulated funds are required to comply with this requirement by September 30, 2018. Funds launched after May 31, 2018 (i.e., as of June 1, 2018) are required to appoint the AMLCO, MLRO and DMLRO upon the launch of the fund.

As of July 20, 2018, CIMA published AMLRs/Guidance Notes FAQs, which are now included on its website. This FAQ provides CIMA's response to certain sections of the Guidance Notes on which it has received various queries.

What are the criteria for the appointment of an AMLCO, MLRO and DMLRO?

An AMLCO, MLRO and DMLRO must be a fit and proper person who:

- ▶ Is a natural person
- ▶ Has sufficient skills and experience and is at least at the managerial level
- ▶ Is autonomous and independent of the function without vested interests
- ▶ Has sufficient time and resources, including support staff with which to perform the role effectively
- ▶ Is knowledgeable of the Cayman Islands AML regulatory regime and receives regular detailed training on anti-money laundering
- ▶ Is well-versed in the different types of transactions of the financial services provider that may give rise to ML/TF risk
- ▶ Has comprehensive understanding of the roles and responsibilities of each function in accordance with Cayman Islands laws and regulations
- ▶ Must have unfettered access to the business lines and direct reporting capability to the board (if applicable)

Complying with these changes

As these appointments are due imminently, funds should look to fill these appointments straightaway. Appointments should be evidenced by a written agreement, with approval from the board.

Next steps – where do we go from here?

For regulated funds, notification of these roles can be made to CIMA by filing the applicable form through its REEFs portal for regulated funds. Standard documentation, such as offering and subscription documents should be updated to reflect the appointment of the three roles along with board resolutions being made formalizing these arrangements. Funds may also consider discussing such roles with its administrators, directors, etc.

Auditors are required under the Mutual Funds Law to report instances of noncompliance to CIMA.

What is the penalty for noncompliance?

Under the Proceeds of Crime Law (Revised), any person who contravenes any provision of the Regulations commits an offense and is liable:

- ▶ On summary conviction, to a fine of KYD\$500,000
- ▶ On conviction on indictment, to a fine and imprisonment for two years

CIMA will also have the power to impose administrative fines for breaches of AML requirements up to KYD\$1m, as of March 16, 2018, under the Monetary Authority Law and (Administrative Fines) Regulations.

Questions?

If you would like further advice, or need to review existing or proposed arrangements, please contact your Global Client Serving Partner or **LaNishka McSweeney** at lanishka.mcsweeney@ky.ey.com or +1 345 814 9029.

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EYG no. 010610-18Gbl
1807-2827542 (BDFSO)
ED None

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