

# 15th Annual International Anti-Money Laundering Conference

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**Regional Focus:**  
*Latin America/Caribbean*

**Regulatory Update:**  
*Understanding Key AML/CFT Developments in  
Latin America and the Caribbean*

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# Disclaimer

The opinions expressed are my own and do not necessarily represent those of the Cayman Islands Monetary Authority.

# Overview

- The primary AML/CFT legislation in the Cayman Islands.
- Recent changes to the AML/CFT regime.
- How Cayman and other Caribbean jurisdictions compare.
- Conclusions.

# **Primary AML /CFT Legislation** **in the Cayman Islands**

- The Proceeds of Crime Law, 2008 (“the PCL”):
  - The Money Laundering Regulations (2009 Revision) (“the Regulations”).
  - The Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (“the Guidance Notes”).
- The Misuse of Drugs Law (2009 Revision)
- The Terrorism Law (2009 Revision)

# Primary AML /CFT Legislation in the Cayman Islands

## *Proceeds of Crime Law, 2008*

- The Proceeds of Crime Law is the primary legislation which applies to **ALL** persons **and** businesses.
- Brought into force on 30 September 2008.
- It repeals the Proceeds of Criminal Conduct Law (“the PCCL”) and sections 31-42 and 46-48 of the Misuse of Drugs Law (the money laundering sections).
- It consolidates the anti money laundering provisions of the Cayman Islands.

# **Primary AML /CFT Legislation in the Cayman Islands**

## ***Three Main Money Laundering Offences***

– It is an offence to:

- Conceal, disguise, convert, transfer or remove (from the Cayman Islands) criminal property;
- Become concerned in an arrangement knowing or suspecting it facilitates the acquisition, retention, use or control of criminal property; or
- Acquire, use or possess criminal property.

# Primary AML /CFT Legislation in the Cayman Islands

## *Money Laundering Regulations*

- The Money Laundering Regulations is the primary legislation which applies to **ALL** persons conducting relevant financial businesses.
- The Regulations place additional legal and administrative requirements on “relevant financial businesses” and licensees licensed under:

# **Primary AML /CFT Legislation** **in the Cayman Islands**

## ***Money Laundering Regulations cont...***

- Banks and Trust Companies Law
- Building Societies Law
- Companies Management Law
- Co-operative Societies Law
- Insurance Law
- Money Services Law
- Mutual Funds Law
- Securities Investment Business Law

# **Primary AML /CFT Legislation** **in the Cayman Islands**

## ***Money Laundering Regulations cont...***

- Attorneys; real estate agents and brokers; listing agents and broker members of the Cayman Islands Stock Exchange must also comply with the Regulations.
- A list of all the activities falling within the definition of “relevant financial business” is contained in Schedule 2 of the Regulations.

# **Primary AML /CFT Legislation** **in the Cayman Islands**

## ***The Guidance Notes***

- Provide general guidance to assist in the clarification and application of the Regulations.
- First issued June 2001; updated June 2002; September 2003; March 2007; May 2007; September 2008; and December 2008.
- Subject to continuous review via the Guidance Notes Committee, which is chaired by CIMA.
- Co-authored with the industry.

# **Primary AML /CFT Legislation** **in the Cayman Islands**

## ***The Guidance Notes cont...***

- Represent “best practice” in conforming with the Regulations.
- Considered by the Cayman Courts in assessing compliance with the Regulations.

# Recent changes to the AML/CFT Regime

- Introduction of the PCL in October 2008
  - Significant differences between the PCL and the PCCL
    - The introduction of the “objective” i.e. reasonableness test – requirement to file a report if a person knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct.

# Recent changes to the AML/CFT Regime

- Significant differences between the PCL and the PCCL cont...
  - Broader powers of the Attorney General and the Cayman Courts in relation to the restraint and recovery of the proceeds of criminal conduct on civil grounds.
  - The term criminal conduct was amended to cover any offence, no longer just an indictable offence, committed in the Cayman Islands or which would have constituted an offence if committed in the Cayman Islands.

# Recent changes to the AML/CFT Regime

- ***Most Recent Changes to the Regulations***
  - Amendments in June 2007, August 2007 and October 2008
  - Key amendments included:
    - Definition of money laundering changed to include specified offences from the Terrorism Law.
    - Introduction of identification and record keeping requirements relating to wire transfers.

# Recent changes to the AML/CFT Regime

## – Key amendments cont...

- Dealing in precious metals or precious stones when engaging in a cash transaction of fifteen thousand dollars or more included as relevant financial business.
- Designation of a person, at management level, to be a compliance officer with responsibility for ensuring compliance with laws relating to money laundering

# Recent changes to the AML/CFT Regime

- ***Most Recent Changes to the Guidance Notes***
  - Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees
  - Financial institutions should be required to designate an AML/CFT compliance officer at management level
  - Guidance on an appropriate AML/CFT internal audit function for all Financial Service Providers
  - The person responsible for considering whether a SAR should be submitted to have unimpeded access to relevant information

# How Cayman and other Caribbean jurisdictions compare

Jurisdiction	Date of Evaluation	Compliant	Largely Compliant	Partially Compliant	Not Compliant	
Bahamas	23 November 2007	13	9	24	3	49
Bermuda	29 January 2008	9	10	16	14	49
Cayman Islands	04 March 2009	14	24	10	1	49
Virgin Islands (BVI)	21 Novemebr 2008	18	15	15	1	49
Canada	29 February 2008	7	23	8	11	49
Honk Kong, China	20 June 2008	10	20	15	4	49
Mexico	17 October 2008	7	17	19	6	49
Singapore	29 February 2008	11	32	4	2	49
Switzerland	14 October 2005	11	21	13	3	48
United Kingdom & Northern Ireland	29 June 2007	24	12	10	3	49
United States	23 June 2006	15	28	2	4	49

**Source:** Mutual evaluation reports for respective jurisdictions

# Conclusions

- Robust AML/CFT Regime in place in the Cayman Islands.
- Perception vs. Reality: Some Caribbean jurisdictions stack up better than you think.
- Commitment required from jurisdictions to continually assess the effectiveness of their AML/CFT regime and make any necessary changes.