

Cayman Islands investment funds: Changes to the AML Regime

Service area / [Investment Funds](#)

Location / [Cayman Islands](#)

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A number of significant changes to the anti-money laundering regime applicable to Cayman Islands investment funds were introduced towards the end of 2017. The key changes are:

- Unregulated investment funds will be subject to the Anti-Money Laundering Regulations, 2017 (as amended, the “**AML Regulations**”) from 31 May 2018
- The Cayman Islands Monetary Authority (“**CIMA**”) has significantly enhanced powers to impose administrative penalties of up to CI\$1,000,000 (US\$1,200,000) for breaches of the AML Regulations

Updated guidance notes on compliance with the AML Regulations have been published by CIMA (the “**Guidance Notes**”), and compliance with the Guidance Notes is taken into account by the Court when considering a party’s compliance with the AML Regulations.

AML Regime of the Cayman Islands

The AML Regulations and Guidance Notes are intended to ensure that Cayman Islands financial service providers, such as investment funds, adopt appropriate procedures to safeguard against the commission of money laundering and/or terrorist financing offences, which are set out in several primary laws. The recent updates to Cayman’s AML regime are to enhance its effectiveness and comply with recommendations of the FATF.

Obligations of investment funds

Earlier versions of the AML Regulations have only applied to regulated open-ended investment funds, which were considered more attractive to money launderers because of the ability to redeem out. However, from 31 May 2018, unregulated open and closed-ended investment funds are required to comply with the AML Regulations.

Delegation

Typically, most open-ended funds comply with the AML Regulations by delegating to an appropriate administrator, and this ability to delegate has been retained. Ultimate responsibility for compliance remains with the fund, but it will generally be sufficient to demonstrate that delegation has been made to a proper person, whose procedures have been reviewed and monitored on an ongoing basis. Delegation can be achieved by:

- Reliance (acknowledged in an administration agreement) on the AML procedures of an administrator that is subject to the AML regime of the Cayman Islands or an equivalent jurisdiction (on the list published by the Anti-Money Laundering Steering Group, an “**Equivalent Jurisdiction**”), where the administrator is administering all subscriptions and redemptions in the fund

- Delegation of any or all of the fund's AML obligations to an administrator subject to the AML regime of the Cayman Islands or any Equivalent Jurisdiction (in which case the administrator can comply with the AML regime in its own jurisdiction)
- Delegation to any appropriate person (such as an administrator that is not itself subject to an applicable AML regime), provided such person complies with the AML Regulations and Guidance Notes on behalf of the fund

Although the detailed delegation options set out above are contained in the sector specific section of the Guidance Notes relating to open-ended funds, delegation is expressly permitted by the AML Regulations, so the same considerations should apply to delegation by closed-ended funds.

Key requirements

If an investment fund chooses not to delegate, or delegates to a person who must comply with the AML Regulations and Guidance Notes on its behalf, the key obligations are as follows:

- Appointment of Anti-Money Laundering Compliance Officer, Money Laundering Reporting Officer and Deputy Money Laundering Reporting Officer
- Adoption of written procedures to:
 - Identify and verify the identity of investors and their beneficial owners
 - Identify, assess and understand its money laundering and terrorist financing risks; including sanctions screening
 - Screen employees
 - Comply with record-keeping obligations
 - Require internal reporting of suspicious transactions
 - Impose internal controls; including independent compliance audits
- Employee training

Customer Due Diligence

The most familiar aspect of the obligations will be customer due diligence ("CDD"); the process of identifying and verifying the identity of investors. Importantly, the level of CDD required is tied to the level of risk identified in accordance with the fund's policies.

In certain cases, funds will be expected to carry out enhanced due diligence, where an investor is identified as higher risk: for example, if the investor or one of its controlling persons is a politically exposed person. In such cases, the fund's verification process should require enhanced CDD checks on the investor's identity and source of funds.

In other cases, where an investor falls in a low risk category, perhaps because it is regulated in the Cayman Islands or an Equivalent Jurisdiction, simplified CDD will be acceptable. In such cases, once an investor's identity is established, verification of its identity and the identity of its beneficial owners is not required.

Risk-Based Approach

The requirement to adopt a risk-based approach is new and requires an in-depth analysis of the risks posed by investors based on factors such as their type, geographic location and the type of fund being invested in. For example, a regulated US pension fund investing in a closed-ended fund will have a different risk profile from an individual located in a high risk jurisdiction investing in an open-ended fund.

Existing Unregulated Funds

There is no exemption or grandfathering provision for existing unregulated funds. From 31 May 2018, these funds will be required to comply with the AML Regulations and Guidance Notes, so should commence preparations as soon as possible.

Consequences of Non-Compliance

Criminal Offence

Failure to comply with the AML Regulations will be a criminal offence, punishable by potentially unlimited fines and up to two years imprisonment. Where an offence is committed by a fund, any of its officers or the officers of its general partner who are found to be complicit in the offence will be liable to the same punishment.

Administrative Fines

In December 2017, amendments to The Monetary Authority Law (as revised) were brought into force and The Monetary Authority (Administrative Fines) Regulations, 2017 were published, which give CIMA powers to impose administrative fines for breaches of the AML Regulations. The three categories of breach are: (i) minor, with a 30 day rectification period and a non-discretionary fine of CI\$5,000 (US\$6,000); (ii) serious, with discretionary fines of up to CI\$50,000 (US\$60,000) for individuals and CI\$100,000 (US\$120,000) for companies; and (iii) very serious, with discretionary fines of up to CI\$100,000 (US\$120,000) for individuals and CI\$1,000,000 (US\$1,200,000) for companies.

Continued

Additional Materials

Copies of the laws, regulations and other materials mentioned in this client update are available on CIMA's website as follows:

- AML Regulations and primary AML laws at <http://www.cima.ky/laws-and-regulations>
- Guidance Notes at <http://www.cima.ky/guidance-notes>
- List of Equivalent Jurisdictions at <http://www.cima.ky/list-of-equivalent-jurisdictions>



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