

# Anti-money laundering in the Cayman Islands

GUIDE

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## Introduction

In recent years the Cayman Islands has significantly expanded its anti-money laundering legislative framework. These developments are regarded as part of the continuing work in progress required to meet the country's domestic and international obligations as one of the world's leading financial centres.

Three pieces of primary legislation, the Proceeds of Crime Law (the **PCL**), the Money Laundering Regulations (the **Regulations**) and, more recently, the Anti-Corruption Law (the **ACL**) provide the platform for anti-money laundering protection in the Cayman Islands. This legislation is supported by the Guidance Notes which are issued and updated by the Cayman Islands Monetary Authority (**CIMA**).

## The PCL

The first version of the PCL was known as the Proceeds of Criminal Conduct Law (the **PCCL**) and was introduced in September 1996. This introduced all-crimes legislation and complemented the Misuse of Drugs Law which had been in place since 1989 and which had focused on the movement of funds generated by the drug trade. The PCCL was drafted to achieve three objectives. First, to allow local restraint and confiscation orders. This ensures that assets can be frozen pending an investigation and confiscated on conviction. Second, the introduction of offences designed to actively discourage any local assistance that may be provided by third parties. No longer is liability limited to the persons who commit the predicate crime. The third area addressed by the PCCL relates to the enforcement of foreign orders.

The PCCL was the first all-crimes money laundering legislation in the region and enacted in substance the 'suspicious transaction' reporting obligations and onward disclosure practice of the United Kingdom Criminal Justice Act. The 'all-crimes' description is tempered by the requirement of dual criminality. In other words, if the predicate offence occurred in a foreign jurisdiction, the offence must be one that would similarly be an offence in the Cayman Islands. Criminal conduct is defined in the PCL as 'conduct which constitutes an offence to which this Law applies or would constitute such an offence if it had occurred in the Islands'. The PCL's aim was to improve effectiveness and bring the legislative framework in line with changing needs and with international standards. The PCL consolidated the law relating to the confiscation of proceeds of crime and in relation to mutual legal assistance in criminal matters. The PCL also sought to widen confiscation orders and extend the powers of enforcement of orders in other jurisdictions outside the Cayman Islands.

## The ACL

The ACL was originally enacted in January 2010 and it complements the PCL and the Regulations. It was drafted to repeal offences created under the Penal Code relating to corrupt practices and to meet OECD obligations relating to combating bribery of foreign public officials in international business transactions. It extends powers in respect of disclosure of information and provides for the protection of informers.

The ACL established a commission known as the Anti-Corruption Commission (the **Commission**). The Commission's primary function is to receive, investigate and consider any report of a corruption offence and any suspected conspiracy to commit an offence under this law.

## The Regulations

The Regulations have been introduced to ensure conformity with worldwide 'know your client' and general compliance standards. The Regulations have introduced offences to which financial services providers may be subject even if they do not have any clients that are dealing with the proceeds of criminal conduct. These offences will apply simply because the procedures as set out in the Regulations have not been followed.

The Regulations supplement the offences that have been created under the PCL. They specifically cover the areas of client identification, record keeping, internal reporting and training and awareness.

## Guidance Notes

CIMA has issued Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (the **Guidance Notes**). The Guidance Notes provide specific information on the operational practices CIMA considers are required to comply with national and international expectations. CIMA states in the introduction to the Guidance Notes that they go beyond the requirements of the money laundering Regulations. Whilst the financial service provider may not be liable for prosecution for a breach of the Guidance Notes, CIMA has indicated that it expects all institutions conducting relevant financial business to pay due regard to them. Further, the Guidance Notes, whilst not having statutory force, may be taken into account by the courts in determining whether a party has complied with the Regulations. The Guidance Notes are reviewed and updated from time to time by CIMA, in consultation with the private sector, to address current issues and developments both locally and internationally.

## Contacts

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