

# AML REGULATION OF ATTORNEYS

An update on the development of CARA

Presentation by Hugo Lodge, Lead Supervisor CARA



# AML/CFT Supervisory Framework

- Designation by Cabinet of CILPA as supervisory body
- Establishment of CARA by CILPA: Governance & Form.
- Model of self-regulation and ‘bi-furcation’ or split of functions
- CARA'S supervisory approach is informed by:
  - the Financial Action Task Force: Risk Based Approach for Legal Professionals, June 2019;
  - the National Risk Assessment of the Cayman Islands (as updated);
  - the Caribbean Financial Action Task Force: Fourth Round Mutual Evaluation Report on the Cayman Islands, March 2019;
  - Cayman Island’s Legal Sector Risk Assessment; and
  - Guidance as issued by CARA, available on our website

# Supervisory Tools

**Onsite:** CARA supervisory staff may visit a firm, usually on notice.

- CARA employs a risk based approach
- Review client files and conduct systems walk-throughs
- Interviews with key personnel: AMLCO, MLRO, supervising partner

**Desk-based reviews:** asking to see core documents

- **Periodic information returns** : annual AML/CFT return from firms
- **Ad hoc information requests:** to deal with topical issues

**Thematic work:** study using a sample of firms to assess compliance with particular aspects of AML/CFT regulations. Theme could be a practice area, for example, firms offering advice to investment funds.

**Outreach work:** training and engagement with firms, Money Laundering Reporting Officers, or specialist membership groups to discuss findings, concerns and challenges in the sector.

# Enforcement Division

- Enforcement investigates and takes action against the **most persistent or egregious breaches**; ensuring that the highest standards of AML compliance are maintained.
- **Investigate** potential breaches in a fair and robust manner.
- **Take Action:**
  - Administrative Fine
  - Removal from Register
  - Referral to ODPP for criminal prosecutions.
- Every matter (except potential criminal prosecutions) will be given reasonable opportunities for **representations**, which will be considered before a decision is made.
- **Fines** imposed will be commensurate to the breach.
- Fines can be **appealed** - Request internal review for minor fines & right to apply for leave to appeal to the Grand Court
- **CARAs ultimate aim is to safeguard the public and profession, ensuring Cayman is respected in the international community for strong AML compliance.**

# AML RISK ASSESSMENT FOR ATTORNEYS

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An overview of core requirements

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# AMLRs – Regulation 8

- Structure: National Risk Assessment (CIG) > Sectoral (CARA) > Institutional (Firm)
- Applying a Risk-Based Approach (“RBA”) , see reg 8

Firms must understand their ML and TF risks

Firms must consider all relevant risk factors

Risk assessments must be kept current

Implement controls to manage and mitigate the risks that have been identified by the country and those identified by the Firm

# How to use Sectoral Risk Assessments

- Firms should read and ensure they understand the national-level risk assessments circulated by CARA: NRA, Terrorism Financing, SIBL EPs
- Firm's own risk assessment should be consistent with the national-level risk assessment
  - > consistent does not mean identical but differences should be explained
- Firm's own risk assessment should include factors from national-level risk assessment
- Firms should consider whether they are exposed to any of the higher risk products, services, jurisdictions, scenarios etc. identified in the national-level risk assessment
  - > if so, implement procedures to manage the risk

# Common mistakes in applying a RBA

1. Assessing only Money Laundering (“ML”) and not Terrorist Financing (“TF”) risks, need awareness of Proliferation Finance and Targeted Financial Sanctions
2. Risk assessment (“RA”) not in writing
3. Lack of approval at senior level, e.g. managing partner
4. Controls not aligned to ML/TF risks identified
5. No trigger or period for automatic review of risk assessment
6. No training on risk assessment results
7. Firm risk assessment inconsistent with sector RA, National RA and or approved guidance
8. RA outsourced, firm not understanding or owning the assessment