



**AML/CFT/CPF/TFS
ANNUAL REPORT**

MARCH 2021

1. INTRODUCTION

In accordance with Part X1B of the Anti-Money Laundering Regulations (“the Regulations”) and Regulation 53D, a supervisory authority shall submit to the Anti-Money Laundering (“AML”) Steering Group an annual report on its supervisory activities, no later than three months after the end of its financial year.

This is our first AML annual report and provides the required information as detailed in AML Regulation 53E. The relevant reporting period is 1 January 2020 to 31 December 2020.

The Cayman Islands’ National Risk Assessment 2015¹ (“NRA”) scored the vulnerability of attorneys-at-law in the Cayman Islands to money laundering as 0.56 or medium owing to, “*the significant volume of complex cross-border structured products and unregulated entities*”². The NRA identified the breadth of legal services provided in the jurisdiction as including investment funds, banking and finance, insurance, wealth structuring and management, including cross border transactions, capital markets, trusts and corporate services, restructuring, insolvency, dispute resolution, litigation, conveyancing, family law and criminal law.

In March 2019, the mutual evaluation of the Cayman Islands’ AML, countering the financing of terrorism (“CFT”) and counter proliferation financing (“CPF”) measures³ by the Caribbean Financial Action Task Force (“CFATF”) identified that, “*the jurisdiction should appoint an AML/CFT supervisory authority for lawyers.*”⁴

The Cayman Islands Legal Practitioners Association (“CILPA”) is the professional representative body for attorneys-at-law in the Cayman Islands and following CFATF’s mutual evaluation was appointed as an AML supervisory authority. On 19 February 2019, by virtue of section 4(9) of the Proceeds of Crime Law, the Cabinet of the Cayman Islands Government (“CIG”) assigned CILPA the responsibility for monitoring compliance with the AML Regulations in relation to firms of attorneys-at-law, including sole practitioners. In May 2019, CILPA Council constituted the ‘Cayman Attorneys Regulation Authority’ (“CARA”), as an operationally independent sub-

¹ Results of the 2015 Cayman Islands National Risk Assessment relating to Money Laundering, Terrorism Financing and Proliferation Financing. It was updated in November 2017.

² NRA, 2015 p.16.

³ Collectively referred to in this report as AML.

⁴ Anti-money laundering and counter-terrorist financing measures. Cayman Islands. Mutual Evaluation Report. March 2019, p.123.

committee of CILPA. Under the internal CARA Regulations, the Council delegated its statutory powers and duties to supervise and enforce on AML compliance matters, to CARA.

CARA is the independent regulatory arm of CILPA for the purposes of AML supervision. We employ operationally independent professional staff and are governed by the CARA Board. Our Board is comprised of prominent members of the Cayman Islands community from varying backgrounds including regulation, enforcement, government, and the legal sector. This model of bifurcation is used in the UK and elsewhere. The recent CFATF/ FATF 'Joint Group' evaluation process considered the establishment of, and the work undertaken by CARA in our first year and was satisfied with our progress.

We report on progress made on our AML supervisory and enforcement mandate to the Honourable Attorney General's Office. This reporting process takes place quarterly and is made pursuant to CILPA's contractual purchase agreement with Cabinet and CIG.

In accordance with the Regulations, attorney-at-law firms including sole practitioners, conducting 'relevant financial business' ("RFB") are required to register with CARA, comply with the requirements under the Regulations, and be supervised and monitored by us in respect of such compliance.

We are committed to raising awareness and understanding of money laundering ("ML"), terrorism financing ("TF") and proliferation financing ("PF") risks in the legal sector and promoting a clear understanding of AML obligations. We also focus on Targeted Financial Sanctions ("TFS") applicable in the Cayman Islands. We act in the public interest, working with supervised firms to help strengthen public confidence and trust in the legal profession, both locally and internationally, by ensuring firms have effective AML processes, procedures and systems and controls in place.

Since February 2020, we have been conducting on-site inspections and desk-based reviews of firms within our supervised population. We have also delivered outreach on early findings from our supervisory inspections and key control deficiencies identified to date, to help raise standards quickly by highlighting common weaknesses in firms' AML compliance programmes.

2. SUPERVISION

Pursuant to regulation 55E of the Regulations, a supervisory authority shall establish and maintain a register of all designated non-financial businesses and professions for which it is designated supervisory authority.

Our registry of supervised firms conducting RFB is publicly available on our website⁵.

Supervised Population

In accordance with the Regulations, supervised firms of attorney-at-law include:

- (i) a body, corporate, association, partnership or limited liability partnership of attorneys who are admitted to practice law in the Cayman Islands; and
- (ii) an attorney admitted to practice law in the Cayman Islands who is in independent practice as a sole proprietor or who provides legal services to an employer other than the Government.

During the relevant period, CARA was responsible for supervising and monitoring 59 firms comprising 23 sole practitioners, 20 general partnerships, and 16 companies. Of the 59 supervised firms, 39 were domestic practices and 20 were multi-jurisdictional and/or internationally affiliated.

The legal services within scope of RFB and offered by most of our supervised firms in the relevant period were:

- legal services relating to the sale, purchase or mortgage of land or interests in land on behalf of clients or customers provided by 81% of firms;
- legal services relating to the management of client money, securities or other assets provided by 36% of firms;
- legal services relating to the management of bank, savings or securities accounts provided by 24% of firms;
- legal services relating to the creation, operation or management of legal persons or arrangements, and buying and selling of business entities provided by 76% of firms; and
- legal services relating to organization of contributions for the creation, operation or management of companies provided by 58% of firms.

Risk Based Approach to Supervision

Supervisory authorities are required to adopt a risk-based approach to supervision. Supervisors should therefore be aware of domestic and international ML, TF, and PF risks which could affect

⁵ www.cara.ky

the firms under its supervision, and to base the frequency and intensity of both on-site and offsite supervision on the risk profile of firms, and the risks faced by the jurisdiction.

In developing our risk assessment framework, the adopted risk-based approach seeks to target our efforts, and efficiently allocate our resources proportionate to the risks. In this way we are able to supervise more effectively by focusing on firms, and or themes, identified as having a higher ML/TF/PF risk, and retain the flexibility to adapt and respond to new and emerging risks as and when they may occur.

We acknowledge that all supervisors should have a clear understanding of the ML/TF/PF risks present in their jurisdiction and that having access to relevant information about such risks is essential for an effective risk-based approach. Accordingly, our risk-based approach is informed by, but not limited to:

- The Cayman Islands Mutual Evaluation Report dated March 2019;
- Results of the 2015 Cayman Islands National Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing (updated November 2017);
- The Cayman Islands Terrorist Financing National Risk Assessment dated February 2020;
- The International Components of Risk Faced by the Cayman Islands as an International Financial Centre;
- The National Risk Assessment of Money Laundering and Terrorist Financing (ML/TF) in the Special Economic Zone;
- The Terrorist Financing Risk Assessment for the NPO Sector in the Cayman Islands;
- The National Risk Assessment of Money Laundering and Terrorist Financing (ML/TF) – Excluded Persons under the Securities Investment Business Law;
- The Cayman Islands Money Laundering Typologies & Trends dated September 2019;
- CARA Money Laundering, Terrorist Financing, Proliferation Financing Risk Assessment relating to the Legal Services in the Cayman Islands dated October 2020;
- Information sharing and collaboration as member of Cayman Islands AML Supervisors Forum (“AMLSF”);
- Information sharing with the Financial Reporting Authority (“FRA”);

- CARA's internal supervisory knowledge and expertise;
- FATF Guidance for a Risk-Based Approach Legal Professionals dated June 2019; and
- CARA's Guidance for the Legal Sector: AML/CFT/CPF/TFS, as updated.

In October 2020, we updated and published our sectoral risk assessment. The assessment details the risk factors according to clients, services, geography, transactions, and delivery channels, and these have been applied in our risk methodology.

Other indicators of risk we consider include whole firm risk factors such as 'fit and proper' status of a supervised firm's principals, complexities associated with firm ownership, staff ratios, reliance on third parties, fee dependency issues, recent mergers and acquisitions, regulatory history, and complaints in connection with poor service, professional conduct and/or adequacy of compliance controls. Other such factors also include adverse media, information from informants, whistleblowers, law enforcement agencies and other AML supervisors.

The type, frequency and intensity of our supervisory measures are based on, and driven by, a firm's individual risk profile. Risk profiling assessments are conducted on each supervised firm, and we assign one of the following four risk classifications: High-High, High, Medium, or Low.

Subsequent updates to a firm's risk profile are made when any new information is received that may affect the firm's inherent and/or control risks or after the occurrence of the following events: on-site Inspection; desk-based review and submission of an annual AML Return. Changes and movements in a firms' risk profile are logged, audited, and can be tracked.

All supervised firms profiled as either High-High or High are subject to an on-site inspection. Firms rated Medium or Low are supervised by desk-based review in the first instance and can be escalated to an on-site inspection, if necessary.

Supervisory Inspections

During the relevant period, we commenced a total of 22 inspections⁶.

In the inspection process, our supervised firms receive a notice of on-site inspection or desk-based review letter and a request to provide pre-inspection material usually within 2-4 weeks, dependent on the size and complexity of the firm. Our supervision staff carry out client file reviews, system walk-throughs and conduct interviews with relevant key staff to test the

⁶ Includes on-site inspections and desk-based reviews.

effectiveness of the firms' AML processes, procedures, and controls. An inspection report is compiled detailing our findings and any remedial action required. Supervision staff monitor firms' remedial action plans to ensure timely implementation. Failings of a clear and serious nature are passed to enforcement.

3. ENFORCEMENT

We published our updated Enforcement Policy in July 2020. This policy outlines steps that we can take during an enforcement investigation from information gathering through to an appeal process stage.

The administrative fine regime is laid out in the Regulations. For breaches prescribed as serious and very serious, a Supervisory Authority has a discretion to decide whether to impose a fine and the amount of the fine, taking into consideration the criteria under Regulations 55V, 55X and 55Y.

Additional supervisory powers available to us include, cancelling a firm's registration if a firm fails to comply with the AMLRs or if a firm (or connected person in relation to the firm) is deemed not fit and proper. We can also make a referral to the Office of the Director of Public Prosecutions for consideration of criminal prosecution.

The effective and proportionate use of our powers and supervisory tools to monitor firms' compliance with the Regulations plays an integral role in the pursuit of our regulatory objectives. We seek to exercise our supervisory powers in a manner that is transparent, lawful, rational, proportionate, and consistent with its publicly stated policies and guidelines. Supervisory engagement often begins with a simple request for data or information. We do have information gathering and investigation powers including a formal request for information and requesting a person to attend before us.

Administrative Fines issued

During the relevant period, we took action against seven firms that failed or refused to register with us. We issued a Breach Notice to each firm detailing our intention to impose a discretionary fine. Failure to register is considered a serious breach under the Regulations, which may attract a penalty of \$50,000 for an individual or \$100,000 for a body corporate. Following receipt of the Notices, two of the firms registered with us. We subsequently issued Discretionary Fine Notices to the remaining five firms. All five firms have sought to appeal, and the fines have been stayed

pending the outcome of the appeal, which CARA is contesting. We are satisfied that each of the five firms are in breach of Regulation 55F by failing to register. In exercising our fine discretions, we issued fines to the five firms in the following amounts -

- Firm 1 – CI\$75,000
- Firm 2 – CI\$65,000
- Firm 3 – CI\$58,500
- Firm 4 – CI\$52,000
- Firm 5 – CI\$39,000

We also imposed a discretionary fine in the amount of CI\$5,000 to a firm for (i) failing to facilitate an on-site inspection, (ii) failing to provide documentation requested, and (iii) failing to attend CARA offices. A further fine of CI\$74,250 was imposed for failing to provide information requested. The firm has appealed both fines.

Any fines issued by us will become a debt to the Crown, effectively Cayman Islands Government.

4. GUIDANCE AND OUTREACH

Regulation 55D allows CARA to issue guidance, directives, and procedures to be followed by firms of attorneys-at-law in order to promote a clear understanding of AML obligations and compliance with the Regulations.

Our website is a key tool we use to provide information to our supervised firms on both our role, responsibilities and what we expect to find during our inspections in relation to best practice. The website includes relevant forms, webinars, training presentations, national and sectoral risk assessments, FATF reports and information on suspicious activity reporting. The website is updated regularly.

Legal Sector Guidance

During the relevant period we issued a revised version of our Guidance for the Legal Sector which included elements of the Terrorism Financing Risk Assessment published in 2020, and a section on identifying proliferation financing risks.

Outreach events in 2020

We are committed to raising awareness and understanding of money laundering, terrorism financing and proliferation financing risks in the legal sector and promoting a clear

understanding of AML obligations. During the relevant period, we hosted a programme of outreach events, in addition to encouraging attorneys-at-law to attend relevant events held by the AML Unit and other training providers.

We gathered feedback from attorneys who attended the following outreach sessions –

- February 2020. Proliferation Finance training by King's College, London
- February 2020. Risk Assessments by the AMLU
- June 2020. ML/TF Risk Assessments Webinar by the AMLU
- July 2020. ML/TF/PF Risks and Typologies Webinar by the AMLU

In February 2020, we recorded e-learning presentations to help our supervised population understand risks in the legal sector, CARA's expectations as supervisor, and the requirements of a firm-wide risk assessment. We also delivered an outreach session on Terrorism Financing training for attorneys.

In April 2020, we issued an advisory notice to our supervised firms on AML compliance during the Coronavirus Pandemic. In May, this was followed up by circulating FATF's paper outlining challenges and good practice to new ML and TF threats arising from the COVID-19 crisis.

In the same month, we also issued a letter to our supervised firms on progress made in CARA's first 12 months since our inception.

In July 2020, we held an outreach session on 'Themes from CARA's Supervisory Inspections' and 'Understanding Risk Assessments for Attorneys.'

In October 2020, CARA participated as a panel member in a presentation by the AML Supervisors Forum on the roles of the MLRO and AMLCO. The FRA also provided an update on suspicious activity reporting.

Our focus is on ensuring our supervisory efforts have a positive impact on compliance and we consistently strive to promote awareness of AML obligations through our website, social media platforms, dissemination of notices and event hosting.

5. SECTORAL RISK ASSESSMENT

In the relevant period we updated our sectoral risk assessment. The purpose of the risk assessment is to outline the money laundering, terrorist financing and proliferation financing risks identified and assessed as being relevant to the legal sector of the Cayman Islands. The

assessment should also be used by supervised firms to inform their own practice-wide risk assessments.

The vulnerabilities of attorney-at-law firms are such that our risk assessment findings confirm the NRA's medium risk rating for the legal sector currently. Many supervised firms maintain practices in which most of their clients come from outside the Cayman Islands. Firms reported significant client presence from the US, Canada, UK, Hong Kong, China, Switzerland, and Singapore. This statistically increases firm's exposure to ML/TF/PF risks as potential business may come from higher-risk jurisdictions.

Some of the risks within scope of RFB, for example the formation of legal persons and arrangements, can be mitigated to a certain extent by the involvement of other regulated entities, such as licensed registered office providers and licensed trustees. However, domestic vehicles with local operations typically do not use licensed registered offices and trustees.

Nearly a quarter of supervised firms reported having foreign and domestic PEPs as clients and/or beneficial owners of clients. This underscores the need for attorneys-at-law to apply a risk-based approach under the Regulations to ensure appropriate due diligence is applied and continually monitored.

The NRA and our sectoral risk assessment should be used by supervised firms to inform their own practice-wide risk assessments. An early theme identified by CARA following onsite inspections and desk-based reviews is that firms need to improve upon their firm-wide risk assessments to meet the requirements of Regulations 8 and 9. Supervision staff identified firm risk assessments lacking sufficient and appropriate data to support the conclusions drawn. This is a key area in which we intend to provide further outreach and guidance to supervised firms.

6. STAFF TRAINING

It is important we are sufficiently resourced as a supervisor to meet our duties under the Regulations. During the relevant period, CARA employed seven full-time staff.

We are committed to ensuring our staff are sufficiently trained to carry out supervisory and enforcement activities. We have designed, implemented, and maintain an in-house staff training and development program. Our internal training involves an array of approaches including orientation training to new staff, lunch-and-learn sessions, online courses, mentoring, work shadowing and self-directed study. We also support staff in undertaking professional qualifications in AML compliance with external training providers such as ACAMs and the ICA.

Nearly all of our staff are educated to degree level or above. Our staff are highly skilled with significant experience in areas such as compliance, investigation, intelligence analysis and regulatory expertise.