

CAYMAN ISLANDS



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**CAYMAN ISLANDS MONETARY AUTHORITY**  
**REGULATORY HANDBOOK – VOLUME I**

**CAYMAN ISLANDS MONETARY AUTHORITY**

**Regulatory Handbook – Volume I**



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## **Definitions**

### **In this Regulatory Handbook –**

“AML” means Anti-Money Laundering

“Authority” means the Cayman Islands Monetary Authority

“Board” means the Board of Directors

“BTCL” means Banks and Trust Companies Law (2013 Revision)

“FRA” means the Financial Reporting Authority

“Guidance Notes” means Guidance Notes on the Prevention and Detection of Money Laundering

“Government” means the Government of the Cayman Islands

“Handbook” means the Regulatory Handbook

“HOD” means Head of Division

“KYC” means Know Your Customer

“MAL” means the Monetary Authority Law (2016 Revision)

“MC” means the Management Committee

“Ministry” means the Ministry of Financial Services, Commerce & Environment

“MLR” means the Money Laundering Regulations (2015 Revision)

“MLRO” means the Money Laundering Reporting Officer

“MOU” means Memoranda of Understanding

“ORA” means Overseas Regulatory Authority

“POCL” means Proceeds of Crime Law (2017 Revision)

“SIBL” means Securities Investment Business Law (2015 Revision)

## **Introductory Comments**

### **Chairman of the Board**

As Chairman of the Board of the Cayman Islands Monetary Authority it is my pleasure to issue a revised and updated version of our Regulatory Handbook. This Handbook sets out the policies and procedures to be followed by the Authority, its committees and officers in performing the Authority's regulatory and co-operative functions.

As the body responsible for the regulation and supervision of licensees operating within or from the Cayman Islands, the Authority plays a key role in upholding the integrity and reputation of the jurisdiction as a leading financial centre. In this regard, the Authority has adopted a set of policies and procedures which adhere to international standards and best practices, while remaining a responsive, practical and accessible regulator.

However, the success of the jurisdiction is also highly dependent on the continuation of the Authority's partnership with the financial sector's private sector associations and the government in the constant drive for excellence. This Handbook is a reference document which provides guidance to all stakeholders.

Best wishes,

Grant Stein  
Chairman of the Board of Directors  
Cayman Islands Monetary Authority

## **Managing Director**

This Handbook aims to be a “hands-on” guide to the operations of the Authority in the pursuit of its regulatory and co-operative functions. Given the dynamic nature of the financial services industry, the Handbook will be subject to on-going review and revision in order to reflect any changes to the Authority’s internal policies and procedures.

I would like to emphasise the Authority’s commitment to transparency and accountability. As a regulator, we are constantly striving to improve our operations and to provide our licensees and regulated entities with relevant information.

On behalf of the staff of the Authority, I encourage all interested stakeholders to make good use of the Handbook, and to provide us with feedback on the document.

Best wishes,

Cindy Scotland  
Managing Director  
Cayman Islands Monetary Authority

# **Introduction to the Regulatory Handbook**

## **Statutory Basis for Issuance**

The Handbook is issued under section 48 of the MAL by the board. The MAL sets out the purposes of the Handbook and the procedures for making amendments to ensure statutory obligations and commitments are adhered to within the guidelines/operations set forth.

## **Purpose of the Regulatory Handbook**

The Handbook sets out the policies and procedures that are to be followed by the Authority, its committees, and officers in performing the regulatory and co-operative functions of the Authority. All policies and procedures contained within this Handbook are consistent with any law, regulation or policy directions given or made there under.

The Handbook includes and is not limited to policies and procedures for:

- Giving warning notices to persons affected adversely by proposed actions of the Authority;
- Giving reasons for the Authority's decisions; and
- Receiving and dealing with complaints against the Authority's actions and decisions.

Per section 48(4) of the Handbook, in cases where the Handbook would have the effect of creating, directly or indirectly, rules or statements of principle or guidance concerning the conduct of licensees or their officers or employees the Authority shall consult with the private sector associations and seek the approval of the Governor. The private sector consultation process is detailed on page 25 of the Handbook.

The Handbook and any amendments to it will be published in the Gazette.

## **Scope of Application**

The Handbook is binding on all board members, committees, and officers of the Authority. The Board is responsible for ensuring adherence to the Handbook and for ensuring that the contents contained therein are kept under continuous review. In furtherance of this responsibility, the Authority will issue supplements in the form of Appendices to the Handbook as required.

## Regulatory Philosophy

The Authority endeavours to fulfil its regulatory and supervisory mandate having due regard to international standards such as the Core Principles for Banking Supervision issued by the Basel Committee on Banking Supervision; the Core Principles for Insurance Supervision issued by the International Association of Insurance Supervisors; the Objectives and Principles of Securities Regulations issued by the International Organisation of Securities Commissions; and the Standard on the Regulation of Trust and Corporate Service Providers issued by the Trust and Company Service Providers Working Group set up by the Group of International Financial Centre Supervisors.

The Authority is currently a charter member of the International Association of Insurance Supervisors and is a member of the International Organisation of Securities Commissions while holding itself to their standards.

To access these international standards use the following links:

- Basel Committee on Banking Supervision, Core Principles for Banking Supervision: [www.bis.org/](http://www.bis.org/)
- International Association of Insurance Supervisors, Core Principles for Insurance Supervision: [www.iaisweb.org](http://www.iaisweb.org)
- Group of International Financial Centre Supervisors, Standard on the Regulation of Trust and Corporate Service Providers: [http://www.gifcs.org/International Organisation of Securities Commissions, Objectives and Principles of Securities Regulation: www.iosco.org](http://www.gifcs.org/International%20Organisation%20of%20Securities%20Commissions,%20Objectives%20and%20Principles%20of%20Securities%20Regulation)

In addition the Authority is represented in various bodies including the Group of International Financial Centre Supervisors, the Working Group on Cross Border Banking, the Association of Supervisors of Banks of the Americas, the Caribbean Group of Bank Supervisors, the Group of International Insurance Centre Supervisors, the Working Group on Trust and Company Services Providers, the Offshore Group of Collective Investment Schemes Supervisors, the Caribbean Association of Insurance Supervisors, the Caribbean Financial Action Task Force and the Overseas Territories Regulators. Participation in such groups seeks to ensure that the Cayman Islands keep abreast of the developments affecting offshore centres and play an active role in international regulatory developments.

## **Background to the Authority**

### **Introduction**

The Cayman Islands are a leading offshore financial centre offering a wide range of sophisticated financial products including banking, insurance, mutual funds, trusts, securities, corporate services and the services of non-banking financial intermediaries. Over the last 30 years the financial sector has matured and emerged as one of the most notable offshore jurisdictions playing host to roughly 30 of the world's top banks. The Islands are the second largest captive insurance domicile in the world with over 700 companies. The Cayman Islands are the number one jurisdiction in the overall world market for offshore hedge funds, with the total number of funds exceeding 10,500 as at 31 December 2016.

## **The History of the Authority**

The Authority was established as a corporate body under the Monetary Authority Law, 1996 which was officially enacted on 1 January 1997. The Authority was the product of a merger between the Financial Services Supervision Division, a government department responsible for financial regulation, and the Currency Board, a Statutory Board, which was responsible exclusively for currency matters. The Authority took over the roles and responsibilities of its predecessors along with the aim of enhancing the regulation of the financial services industry and the promotion of financial stability.

As a statutory body, the Authority is subject to the provisions of the Public Management and Finance Law (2013 Revision). This covers, amongst other things, the Authority's expenditure budget for each financial year, and the preparation, maintenance, auditing and publication of the Authority's accounts. The Authority is required to put forward its budget proposal to the Cabinet, via the Minister of Finance, for approval by the Legislative Assembly. As a Statutory Authority that is a body corporate, the Authority can sue and be sued in its own right. Essentially it possesses a separate legal personality from the Government while being answerable to the Government for the conduct of its affairs.

Prior to independence, the primary responsibility of the Authority in respect of financial regulation was the supervision of licensees pursuant to the regulatory laws and the monitoring of compliance with the money laundering regulations. The Government had the ultimate decision making power with respect to the issuance of licences and the exercise of disciplinary powers.

On the currency side, the Authority was given responsibility for the issuance and redemption of currency, and the management of the Currency Reserve on behalf of the Government and, by extension, the people of the Cayman Islands.

## **An Independent Authority**

On 12 March 2003, the Monetary Authority (Amendment) Law, 2002 was enacted providing for an operationally independent Authority.

The main impact of the revised legislation was in relation to the Authority's key functions of licensing, on-going supervision, and enforcement. The Board of Directors is now solely responsible for operational decision-making, including responsibility for the licensing and registration of regulated financial business in or from the Cayman Islands. The currency function remained unchanged under operational independence.

The Authority remains accountable to the Government and the Legislative Assembly and will continue to collect licensing fees on behalf of the Government. The Authority holds all monies paid into the Government Executive Bank Account on behalf of the Government and it is from this account that the Authority is paid the amount determined during the budget process. Any funding surplus to requirements will be paid into the General Reserve unless agreed otherwise by the Governor.

## Mission Statement

To protect and enhance the reputation of the Cayman Islands as an International Financial Centre by fully utilising a team of highly skilled professionals and current technology, to carry out appropriate, effective and efficient supervision and regulation in accordance with relevant international standards and by maintaining a stable currency, including the prudent management of the currency reserve.

## Principal Functions

The principal functions of the Authority can be summarised as:

- **Monetary functions**, namely to issue and redeem Cayman Islands currency notes and coins and to manage the Currency Reserve in accordance with the MAL
- **Regulatory functions**, namely to regulate and supervise financial services business in accordance with the MAL and the regulatory laws, to monitor compliance with the MLRs and to perform any other regulatory or supervisory function that may be given to the Authority by any other law;
- **Co-operative functions**, namely to assist overseas regulatory authorities in accordance with the MAL;
- **Advisory functions**, namely to advise the Government on the foregoing matters, and in particular with regard to whether they are consistent with other jurisdictions, and with regard to the recommendations of international organisations.

Section 6(2) of the MAL states that in performing its functions and managing its affairs, the Authority shall –

- a) Act in the best economic interests of the Islands;
- b) Promote and maintain a sound financial system in the Islands;
- c) Use its resources in the most efficient and economic way;
- d) Have regard to generally accepted principles of good corporate governance;
- e) Comply with this and any other law, including any regulations or directions made or given there under; and
- f) Have such ancillary powers as may be required to fulfil the functions set out in paragraphs (a) to (e).

In addition, section 6(3) MAL states:

In performing its regulatory functions and its co-operative functions, the Authority shall, in addition to complying with the requirements of subsection (2) –

- (a) Endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;
- (b) Endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;

- (c) Recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands;
- (d) Recognise the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (e) Recognise the desirability of facilitating innovation in financial services business; and
- (f) Recognise the need for transparency and fairness on the part of the Authority.

## **Structure and Responsibilities**

### **Organisational Structure**

The Authority is comprised of twelve divisions. There are five supervisory divisions, namely the Banking Supervision Division, Investments Division, Securities Division, Insurance Division and the Fiduciary Services Division. The Onsite Inspection Unit is also heavily involved in carrying out supervisory practises. The four non-supervisory divisions are: Currency, Policy & Development, Legal, and Compliance. The operational divisions are Finance, Human Resources, and Information Technology. The Financial Stability Unit is responsible for conducting stress tests while implementing a comprehensive macro prudential and crisis management framework. Furthermore they produce financial stability reports.

The management of the Authority rests in the hands of the Board, the Executive Committee of the Board, and the MC. The day-to-day running of the Authority is vested in the hands of the Managing Director and the Deputy Managing Directors.

In order to increase the effectiveness of the Board a number of sub-committees have been formed. Their specific responsibilities are outlined in the section “Sub-committees of the Board.”

### **Line Responsibilities**

The Managing Director reports directly to the Board of Directors and in turn has oversight of four persons comprising the Deputy Managing Director - General Counsel, the Deputy Managing Director - Supervision and the Deputy Managing Director - Operations. The MD’s office includes an Executive Assistant - a PR Executive and a PR Officer. The supervisory divisions report to the Deputy Managing Director - Supervision, while the Information Technology Division, the Currency Division, the Finance Division and the Human Resources Division report to the Deputy Managing Director - Operations; and the Head of Compliance and Head of Policy and Development report to the Deputy Managing Director - General Counsel.

A copy of the current organisational chart is included in Appendix C1 along with organisational charts for each division.

## The Board of Directors

### Board Composition

The Board is appointed by the Governor and comprises of the Managing Director as an ex officio director, and up to nine other directors, including the Chairman and Deputy Chairman. Directors are initially appointed for a period of three years. They are required to meet both a fit and proper criterion, and possess substantial knowledge and experience relevant to some or all of the functions of the Authority. No person may be appointed or remain a director of the Authority if they are an elected member of the Legislative Assembly, or an official member of the Cabinet.

The Governor appoints the Board and after consultation with the Board, the Governor appoints the Chairman and Deputy Chairman.

At the time of revision of the Handbook, the members of the Board comprise of:

| <u>Board Member</u>                      | <u>Appointment Date</u> |
|--|-------------------------|
| Mr. Grant Stein, Chairman                | July 2015               |
| Mrs. Cindy Scotland (Managing Director), | June 2002               |
| Professor William Gilmore,               | June 2006               |
| Mr. Harry Chisholm, MBE, JP,             | July 2008               |
| Ms. Judith Watler                        | July 2014               |
| Mr. Adrian (Gus) Pope                    | July 2015               |
| Ms. Patricia E. Estwick                  | July 2015               |
| Mr. Garth MacDonald                      | March 2016              |

### Board Functions

The Board has responsibility for a number of licensing and supervisory decisions. As permitted under the MAL, to enhance efficiency, the Board has delegated several such decisions to the MC. The responsibilities of the Board, MC and Regulatory Divisions are detailed in the section “Procedures for Dealing with Licensing and Supervisory Matters” (Appendix E1).

All enforcement decisions, with the exception of any MLRO matters, are taken by the Board or the Executive Committee, following the submission of a paper by the MC.

In recognition of the importance of the role and functions of the Board and the need for Board members to be aware of their fiduciary duties, responsibilities, and the importance of their decisions they are subject to a Code of Conduct and a Conflict of Interest Code. These documents are included in the appendices as Appendix C2 and Appendix C3 respectively.

## **The Executive Committee of the Board**

### **Composition & Quorum**

With the exception of 1) any matter on which the MLRO is obliged to report pursuant to the MLR and 2) new licence applications under SIBL that have been delegated to MC, the Board or Executive Committee has responsibility for **all** enforcement decisions where the institution does not already hold a licence from the Authority.

The Executive Committee is comprised of the locally based Authority directors, including the Chairman and Deputy Chairman of the Board. A quorum of three local directors is required in order for a meeting to be properly constituted. A decision is made by majority vote of those present.

During a state of emergency declared by the Governor of the Cayman Islands, the Board delegates all power and authority necessary to the executive Committee to deal with that emergency.

### **Sub-committees of the Board**

The aim of the sub-committees is to facilitate an expeditious decision-making process. The sub-committees comprise of delegates from the Board, selected for their specific expertise, and the General Counsel.

Two Standing Sub-Committees of the Board have been established, namely:

- Audit and Finance;
- Policy, Strategy & Legislative;

The broad responsibilities of each sub-committee are:

### **Audit/Finance**

The Audit/Finance sub-committee is responsible for reviewing the Authority's financial position and results of operations, the financial reporting process, the system of internal control, the audit process, and any other financial and audit matters referred to it by either the Board or Management.

**Policy, Strategy & Legislative**

Together with management, this sub-committee develops, and makes recommendations to the Board, on the Authority's mission, goals and strategic plan, as well as new regulatory policies and the Authority's policies. The committee also makes recommendations regarding the Authority's relationships with other regulatory and international organisations. It keeps under review with management any legal, legislative and regulatory matters and developments, such as proposed laws, regulations, memoranda of understanding, etc., that are relevant to the Authority or the industries the Authority regulates.

## **The Management Committee**

### **Composition**

In pursuit of its functions, the Board may delegate to a sub-committee or the MC such licensing, supervisory and other powers and duties that the Board sees fit. A decision of the MC shall be deemed to be a decision of the Board, as the powers of the MAL are vested with the Board.

The MC is comprised of the Managing Director as Chairperson, the Deputy Managing Director, the Legal Counsel and the Heads of the Regulatory Divisions or such person as may be designated by the Head to represent the Head in his or her absence. There are currently four regulatory Heads on the MC, representing the Insurance Division, Banking Supervision Division, Fiduciary Services Division, the Investments Division and the Securities Division. In addition, the Managing Director may, with the approval of the Board, designate such other senior officer of the Authority to sit on the Management Committee. A quorum of at least two of the Heads of the Regulatory Divisions must be present in addition to the Chairperson in order for a meeting to be properly constituted. The Chairperson's alternate may be any one of the Deputy Managing Director, the General Counsel, or the Head of a Regulatory Division not already included in the quorum, or in their absence, such other member of the MC as designated by the Managing Director. A decision is made by majority vote of those present.

### **Management Committee Functions**

The MC performs the operational decision-making of the Authority and considers all issues that impact on the Authority. A primary role of the MC is licensing. Each supervisory division is responsible for the licensing process, which includes an assessment of the fitness and propriety of all applicants and proposed licensees. Details on the procedures for licensing are given in The Licensing Process.

The specific licensing and supervisory responsibilities of the MC are detailed at appendix E2.

Identifying high risk entities is a function of the MC that is worthy of mention. The MC is cognizant of the fact that some entities will be classified as high risk and the appropriate risk management tools are in place to deal with such entities. These entities are subject to on-going supervision and enhanced surveillance in order to mitigate those risks.

In addition, the MC will be responsible for the initial consideration of enforcement actions and any other matters that the Board may decide to delegate to it from time to time. The MC reviews all papers going forward to the Board, details of which are given in the section "Preparation of Papers for Approval" and puts forward its recommendation for the Board to adopt.

In addition, the MC considers other significant matters that impact the Authority on a whole, for instance:

- Review of all Authority policies and procedures prior to consideration of the Policy, Strategy & Legislative Sub-Committee and industry consultation;

- Review of Authority reports, publications, and correspondence to external bodies such as the International Monetary Fund and associations/bodies both local and international;
- Dissemination of the outcome of any discussions/consultation with local industry associations;
- Resource and budgetary issues;
- Strategic and operational matters pertaining to the Authority’s primary functions;
- Human resources and training considerations; and,
- Any other matter, which the Managing Director and/or Board may delegate to the MC.

In performing its functions the MC is subject to a Code of Conduct (see Appendix C4) and is accountable to the Board for all of its actions through the preparation of a monthly report. The report contains a listing of all licensing decisions and all recommendations provided to the Cabinet for consideration along with the Cabinet’s decision, if known. In addition, the report will contain any other information that the MC considers that the Board should be made aware of. The MC will also provide monthly reports to the Ministry – providing information on the number of licences issued and the number cancelled or revoked. A quarterly report on all share transfers will also be provided to the Minister of Financial Services.

## **Preparation of Papers for Approval**

### **Management Committee**

All papers (see samples Appendix C5 & C6) must be approved by the relevant HOD or in his/her absence the Deputy Head before submission to the MC for pre-approval/approval as appropriate. All papers must initially be emailed to the Executive Assistant to the Managing Director who will insert reference number details. The Executive Assistant to the Managing Director posts referenced papers electronically, in order that members of the MC may consider the paper in advance of the weekly meeting.

Prior to a paper going forward to the Board, where the Board has delegated responsibility for a particular function to the MC, the MC will review and pre-approve/approve the paper, and where appropriate will make recommendations on the course of action to take. In some circumstances the MC may review a paper and decide that the scope of the matter is beyond the authority of the MC, or they would prefer to seek the advice of the Board. In this instance the paper will be submitted onwards to the Board, together with all relevant information, including the MC's recommendations.

Once the MC approves a paper for onward submission to the Board the relevant Head arranges for the appropriate number of copies of the paper together with all pertinent files and documentation, to be delivered to the Executive Secretary to the Board, for inclusion in the agenda of the Executive Committee.

### **The Cabinet**

Some functions of the Authority will remain the ultimate responsibility of the Cabinet (e.g. currency matters under section 24 of the MAL). Prior to a paper going forward to the Cabinet, it would have passed through the procedures outlined above for MC pre-approval and Board approval. Once approved by the Board the Managing Director will forward the paper to the Cabinet for consideration.

## **Records & Extracts**

A log of every paper received for consideration by the Board is retained electronically on the internal computer network. Each paper is recorded and allocated a meeting number and an item number. Extracts (see sample outlines and samples in Appendices C7 (a) (b) and C8 (a) (b)) will be produced on yellow copy paper for all licensing/supervisory decisions taken by the Board. A copy of each extract will be forwarded to the HOD from which the paper emanated. A master file containing all extracts will be held in the Secretary to the Board's office and retained electronically on the internal computer network.

The Executive Secretary to the Board will keep a record of all decisions and the reasons for taking the decision by the Board. The decision, and where appropriate, the relevant reasons – will be communicated to the applicant/licensee in accordance with the Authority's policies and procedures.

## **Licence Issuance, Communication & Gazetting**

When the Authority approves an application for a licence, the relevant HOD will arrange for the licence to be prepared and submitted to the Managing Director's office for signature. Once licences or other associated paperwork are signed, the applicant is notified of the approval and paperwork is sent to the Executive Secretary in order that the necessary documentation be dispatched to the applicant and copied to the appropriate Division.

The Division must ensure that those matters, which require gazetting, are forwarded to the Gazette Office for publication on a monthly basis.

## **Reporting**

The MC will prepare a monthly report for submission to the Board. The Report will contain a listing of all licensing decisions taken and all recommendations provided to the Cabinet for consideration together with the Cabinet's decision, if known. In addition, the Report will contain any matters of significance that the MC believes the Board should be made aware of.

The Managing Director provides quarterly reports to the Ministry covering the following areas.

- Board Meetings convened
- General Policy Issues
- Overview of the Regulatory Divisions, detailing any trends and initiatives happening in the domestic and international markets
- International Initiatives
- Summary of Number of Licences (using comparatives)
- Comparison of Budgeted Revenue and Actual Revenue collected to date

## **Meetings**

### **The Board**

The Board meets every quarter. Task lists are created in each meeting and progress reports are made at every meeting. Minutes are kept for all meetings.

### **Executive Committee of the Board**

The Executive Committee of the Board meets as necessary, and all papers, including key background documents must be submitted to the Secretary of the Board by 4:00pm, 5 business days before the meeting for inclusion on the agenda. In exceptional circumstances, papers received later may be brought before the Executive Committee for consideration, and the Board will exercise its discretion on the approval of late papers. The Chairperson must also approve the inclusion of a late paper. At each Executive Committee meeting, minutes will be recorded, confirmed and retained.

The agenda and the supporting materials shall be circulated to Executive Committee members present in the Island no later than three working days prior to the meeting. The Agenda and the supporting materials shall be circulated by email to all directors.

### **Management Committee**

The MC will usually meet on a Tuesday morning as well as on an ad hoc basis. All papers, including key background documents must be submitted to the Executive Assistant to the Managing Director by 4:00pm on the preceding Thursday for inclusion on the agenda. In exceptional circumstances, papers received later than the preceding Wednesday may be brought before the MC for consideration, but the Chairperson must approve inclusion of a late paper. At each MC meeting, minutes will be recorded, confirmed and retained.

## **Regulatory Division Responsibilities**

Along with the Executive Committee and the MC, the supervisory divisions are responsible for specific licensing and supervisory matters. The responsibilities of each supervisory division and the procedures they follow to fulfil them will be issued in a separate supplement to the Handbook. A summary of each division's responsibilities can be gleaned from the timelines in Appendix E2.

## External Relationships

### Relationships with Other Regulatory Bodies

Under the MAL the Authority can enter into an MOU with other ORAs.

#### Dealing With Requests for Assistance from an Overseas Regulatory Authority (ORA)

The Authority has a legal responsibility under section 6(1) (c) of the MAL to provide assistance to ORAs. This falls under the co-operative function of the Authority. The internal procedures provide a clear definition of what constitutes an ORA and the actions to be taken by the Authority upon receipt of a request for assistance from an ORA. The internal procedures are detailed in Appendix D1.

#### Memorandum of Understanding with Overseas Regulatory Bodies

A MOU is essentially a statement of intent setting out the terms and conditions of information exchange and investigative assistance between regulatory authorities. This assists in the quality and timeliness of information on licensees' operations overseas, reduces the cost of obtaining such information, and streamlines the administrative processes when requests are received. The Authority has established an objective criteria that an ORA must meet before the Authority would consider entering into an MOU with it. The details of the criteria are given in Appendix D2 and the standardised format for a MOU is given in Appendix D3.

The Authority has, at the time of issuance of the Handbook, entered into MOU with:

- The Securities Commission of Brazil
- Malta Financial Services Authority
- Financial Services Authority (UK)
- Superintendencia de Entidades Financieras y Cambiarias del Banco Central de la Republica Argentina
- Banco Central Do Brazil
- Isle of Man Financial Services Commission
- Bermuda Monetary Authority
- Bank of Jamaica
- The Superintendency of Banks of the Republic of Panama
- The Office of the Superintendent of Financial Institutions Canada
- The Jersey Financial Services Commission
- Labuan Financial Services Authority
- Guernsey Financial Services Commission
- Insurance Commission of The Bahamas (ICB)
- Finanzdienstleistungsaufsicht of Germany (BaFin)
- Financial Superintendence of Colombia
- Financial Market Authority of Austria
- Hungary Financial Supervisory Authority
- Bulgaria Financial Supervision Commission

- Czech National Bank
- Denmark Financial Supervisory Authority
- Estonia Financial Supervision Authority
- Finland Financial Supervisory Authority
- France Financial Markets Authority
- Greece Hellenic Capital Bank
- Bank of Lithuania
- Iceland Financial Supervisory Authority
- Central Bank of Ireland
- Latvia Financial and Capital Market Commission
- Liechtenstein Financial Market Authority
- Luxembourg Financial Sector Supervisory Committee
- The Netherlands Authority of the Financial Markets
- Norway Financial Supervisory Authority
- Poland Financial Supervision Authority
- Portugal Securities Market Commission
- Romania Financial Supervisory Authority
- Slovak Republic National Bank of Slovakia
- Sweden Financial Supervisory Authority
- Cyprus Securities and Exchange Commission
- United Kingdom Financial Conduct Authority
- Belgium Financial Services and Markets Authority
- Canada Office of Superintendent of Financial Institutions
- Financial Services Authority UK – Addendum
- U.S. Federal Deposit Insurance Corporation
- US Securities and Exchange Commission
- Regional Regulatory Authorities for the Exchange of Information and Cooperation and Consultation – Addenda
- Dubai Financial Services Authority
- National Banking and Securities Commission of the United Mexican States
- Turks and Caicos Islands Financial Services Commission
- U.S. Banking Regulators - Statement of Cooperation
- State of Florida Office of Insurance Regulation
- Office of Insurance Commissioner of the State of Washington
- Abu Dhabi Global Market FRSA
- Gibraltar Financial Services Commission
- US Commodity Futures Trading Commission

The Authority also has a multilateral MOU with The Regional Authorities for the Exchange of Information and Co-operation and Consultation, an Undertaking with the US Securities and Exchange Commission, and an Undertaking for Sharing of Information with the US Commodity Futures Trading Commission. Negotiations are ongoing with other ORAs.

## **Relationships with the Cayman Islands Public**

### **General Public Disclosure**

The Authority endeavours at all times to provide timely and comprehensive information to its stakeholders. In pursuit of this objective, the Authority issues a number of publications including the Annual Report, Statistical Digests, Regulatory Circulars, a quarterly newsletter - “*The Navigator*”, and regular press releases. In addition, all of the rules and statements of guidance issued to licensees are posted on the Authority’s website along with licensing requirements, statistical information, statutory reporting forms and their associated schedules, and the AML Guidance Notes – related issues. The Authority is committed to transparency and disclosure and utilizes the website in particular to keep licensees and their customers up-to-date with initiatives impacting the jurisdiction.

### **Private Sector Consultation Process**

The Authority has long recognised that the success of its initiatives is dependent on the extent to which licensees embrace them and collaborate with the Authority in their implementation. This ‘culture of consultation’ is formalised through a clearly stated private sector consultation process.

Under the MAL section 4(1), the Authority is required to consult the private sector associations when seeking to introduce new measures, namely rules, statement of principle and statements of guidance. Such consultation will normally include a cost benefit analysis of such proposed measures. The normal period for consultation is 30 days but on occasion, for expediency, the period for consultation may be reduced from the normal 30 days. The Heads or Chairpersons of the Private Sector Associations are the formal point of consultation with industry and the Authority will only accept consolidated sets of comments from each Association on the proposed measure. Each proposed measure will be posted to the consultation page of the Authority’s website.

The Private Sector Associations recognised under the law are the: Law Society, Caymanian Bar Association, Cayman Islands Society of Professional Accountants, Fund Administrators’ Association, Insurance Managers’ Association, Company Managers’ Association, Bankers’ Association, Society of Trust and Estate Practitioners (Cayman Islands Branch), Cayman Islands Compliance Association, Alternative Investment Management Association (Cayman Islands), Cayman Islands Directors Association, Cayman Islands Financial Services Association, Cayman Islands Insurance Association, Chartered Financial Analysts Society of the Cayman Islands and the Cayman Islands Insurance Association. However, in many instances the Authority will also consult with other relevant associations such as the Cayman Islands General Insurance Association and the Cayman Islands Society of Financial Analysts.

Where the MAL requires private sector consultation in relation to a proposed measure, all proposed measures are sent to the private sector associations along with:

- An explanation of the purpose behind the measure;

- The reasoning for the measure; an explanation of how others countries and territories have adopted the measures; and
- An estimate of the associated costs and benefits associated.

Representations can be made within a prescribed time, to which the Authority will provide a written response. Where a proposal requires the approval of the Governor, a copy of the private sector's representations along with the Authority's response will be provided to the Financial Secretary.

The measures subject to the consultation process include:

- The issuance or amendment of rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees;
- The issuance or amendment of statements of guidance concerning the requirements of the MLRs; and
- The issuance or amendment of rules or statements of principle or guidance to reduce the risk of financial services business being used for money laundering or other criminal purposes.

## **Other Consultation Groups**

### **The Anti-Money Laundering Steering Group**

The group is comprised of the Managing Director of the Authority, the Financial Secretary, the Attorney General, the Solicitor General, the Commissioner of the Royal Cayman Islands Police Department, and the Collector of Customs. The group is responsible for overseeing the Cayman Islands AML regime, ensuring effective collaboration between regulators and law enforcement, advising government on AML issues, and monitoring the interaction and co-operation with overseas agencies.

### **The Anti-Money Laundering Guidance Notes Committee**

The Committee, comprised of representatives from the Authority, the Financial Secretary's Office, the Attorney General's Office and Industry Groups affected by the MLRs, was instrumental in co-authoring the AML Guidance Notes in the Cayman Islands.

# The Supervisory Approach

## Introduction

The Cayman Islands is a leading international financial centre attracting business from a global market. Consequently, the Authority is charged with responsibility for the regulation and supervision of numerous diverse financial service providers. Regulation of financial activities is undertaken by the Authority pursuant to the provisions of the MAL and the regulatory laws. A carefully calibrated approach to supervision is a key element in the maintenance of the Cayman Islands as a first class financial centre that adheres to international standards. As can be seen in its mission statement, the Authority aims for appropriate, responsive and cost effective supervision of financial services.

The major objective of the supervision process is to gain a thorough understanding of a licensed financial institution's operations, the risks it faces and how it deals with these risks and to ensure that these are well understood by the relevant public. The Authority has adopted a risk-based approach to supervision. This approach is efficient and flexible since it takes into consideration the nature of business activities and the extent of risk within each licensee. It seeks to profile the risks faced by licensees so that supervision can be better targeted at areas and institutions where overall risks are higher. The methodology covers specific risk factors in the following broad risk groups: financial soundness, environment, business plan, controls, organisation and management. Licensees rated as high-risk can expect increased monitoring from the Authority.

The Authority's supervisory functions are divided into three broad categories; namely licensing, monitoring (off-site supervision and on-site inspection), and enforcement. The initial licensing process (review of application and supporting documentation as to legal compliance and sufficiency, due diligence, issue of licence) is designed to limit entry into the Cayman market to fit and proper owners and managers.

Financial companies and service providers are expected to operate in accordance with international standards and are given considerable scope in applying these practices to the products and services they chose to provide. The Authority provides Statements of Guidance in the most important areas. Considerable weight is placed on an adequate financial stake by owners (adequate minimum capital). Monitoring adherence to these norms includes both off-site supervision and on-site inspection.

Off-site supervision activities encompass the ongoing monitoring (review of changes in directors, business plans, prudential meetings, quarterly analysis and annual audited financial statements). Off-site supervision covers both the parent institution and the licensee. It includes conducting prudential meetings with the licensee's representatives on a periodic basis to discuss their operations, performance and future strategies, ensuring compliance with the various legislation and regulations and regular analysis of financial statements of the licensee, with a periodic review of the parent's financial statements.

On-site inspections involves the Authority’s staff visiting the offices of licensees (either in Cayman or in the jurisdiction where the Cayman licensed entity operates), reviewing and assessing their corporate governance, operational and risk management processes with respect to regulatory compliance (including AML/CFT), presenting and discussing the inspection findings with the licensee, preparing and issuing the draft inspection report, reviewing the final comments from management of the licensee and issuing the final report. It also includes discussions with the external auditors and the concluding meeting with senior management. The inspection cycle depends on the nature of the institution and the respective supervisory division’s risk assessment. The on-site inspection process is used in conjunction with the regular off-site monitoring system carried out by the Authority. As a result, consideration is given to whether there are any issues raised by the off-site monitoring system, which should be addressed during the on-site visit. Further details on the elements of the on-site inspection process are given in Appendix F1.

In carrying out its regulatory functions, the Authority recognises that there is a limit to the extent it can effectively supervise. The Authority’s role is, in addition to limiting owners and managers to fit and proper persons, to ensure that licensed financial firms are operated in accordance with the law and their licence agreements, that weaknesses in a licensee’s procedures, systems, or operations are identified and dealt with, and if in spite of this the firm fails, that its exit from the market is timely, fair, and efficiently managed. It is not the Authority’s responsibility to ensure that each firm is operated profitably and successfully, which is the responsibility of its owners and management. Rather the Authority’s role is to enforce adherence to reasonable prudential limits to risk taking in relation to the products and services it has chosen to provide and accurate disclosure of each firm’s financial condition so that the public can judge for itself the risk of conducting business with the firm. The Authority’s goal is to clarify the risks the public faces in dealing with different classes of firms that it regulates, and thus to promote public confidence in dealing with these institutions.

## **The Licensing Process**

As a result of operational independence of the Authority decision-making is vested in the Board of the Authority. Details on how the Authority deals with licensing and supervisory matters are explained in Appendix E1.

Under the BTCL, licences are issued in two categories. Category “A” banks provide services to domestic and international markets. Category “B” banks usually provide services to international markets and facilitate inter-bank transactions. The Authority also issues “Restricted” category “B” licences. The holder of a “Restricted” licence is subject to a number of restrictions. These are detailed in section 6(6) of the BTCL. The Authority is also responsible for the licensing and supervision of non-banking financial intermediaries such as money services businesses, credit unions, building societies, and the Cayman Islands Development Bank.

The categories of insurance licence issued by the Authority are Class “A” Insurance Companies, Class “B” Insurance Companies, Class “C” Insurance Companies, Class “D” Insurance Companies, Insurance Managers, Agents, and Brokers. A Class “A” licence permits a local or external insurer to carry on business generally in or from within the Islands. These provide insurance to the “domestic” market.

Class “B” licences permits exempted insurers to carry on insurance business other than domestic business from within the Islands. It is primarily for Captives and is sub-divided into three categories -- Class B(i), B(ii) and B(iii). Class ‘B(i)’ includes insurers with at least 95% of the written net premiums originating from the insurer’s related business. Class ‘B(ii)’ is for insurers with over 50% of the net premiums written originating from the insurer’s related business, and Class ‘B(iii)’ includes insurers with 50% or less of the written net premiums originating from the insurer’s related business.

Class “C” licenses permit an exempted insurer to carry on insurance business involving fully collateralised arrangements such as catastrophe bonds and other Insurance Linked Securities. Also, it permits an exempted insurer to carry on insurance business involving the provision of reinsurance arrangements.

Furthermore a Class “D” license permits an insurer to carry on reinsurance business and such other business as may be approved in respect of any individual licence by the Authority. The Insurance Manager's licence - permits a company to provide insurance expertise to or for class B insurers or class C insurers. An Insurance Agent's licence permits a person (who is not an insurer) to solicit domestic business on behalf of not more than one general insurer and one long term insurer. The Insurance Broker's licence - permits a person to arrange or procure, directly or through representatives, insurance or reinsurance contracts or the continuance of such contracts on behalf of existing or prospective policyholders.

The Cayman Islands are the number one jurisdiction for hedge funds. There are four categories of mutual funds registered or licensed by the Authority, namely: Registered funds, Administered funds, Licensed funds and Master Funds. Under SIBL, the Authority is also responsible for the supervision and regulation of persons/entities conducting securities business, including market makers, broker-dealers, securities arrangers, securities advisors and securities managers.

The Authority also has responsibility for fiduciary services providers, such entities include: Company Managers, Corporate Service Providers, and Trust Companies. The latter includes restricted trust licences and nominee trust licences.

The Authority endeavours at all times to ensure that all licensing and supervisory matters are dealt with efficiently and in a timely fashion, subject to the receipt of all requisite documentation and has established firm time lines for such. There are similarities and differences between the supervisory divisions due to the diversity of the licensees supervised, hence separate time lines are given for each division. The time lines for the processing of approvals and the body responsible for the approvals are given in Appendix E2. Similarly, there are differences in the information needed for type and class of licence. Specific

guidance is given on the Authority's website under the respective supervisory division link. These will be issued in a supplement to the Handbook.

### **Assessing Fitness and Propriety**

A fundamental part of the process of licensing includes an assessment of the suitability of the directors, officers and managers of the licensee. Applicants must complete the Authority's Personal Questionnaire and satisfy the requirements of the appropriate regulatory law in respect of fitness and propriety. The regulatory laws state that, in determining whether a person is a fit and proper person, regard shall be had to all circumstances including that person's:

- Honesty, integrity and reputation;
- Competence and capability; and
- Financial soundness.

The Authority's internal procedure for Assessing Fitness and Propriety used in making the assessment upon application is included in Appendix E3 and the Personal Questionnaire in Appendix E4.

### **Licence Cancellations**

The procedures for the cancellation/termination or revocation of a licence across the supervisory divisions largely follow a standard procedure. However, due to the nature of the business of licensees, and the different application requirements, there are different termination requirements, particularly in relation to Mutual Funds. Specifically, for mutual funds, there is a distinction between surrendering a licence and the de-registration of a fund.

Most surrenders/licence cancellations will not involve a liquidation (either voluntary or compulsory). In cases where there is a compulsory winding up, the Authority will have normally revoked the licence, rather than allowing the Company to surrender it.

Termination/surrendering/cancellation of a licence is not considered an enforcement action.

The specific procedures carried out by the supervisory divisions in relation to their respective classes/categories of licensee will be detailed on a division-by-division basis in a supplement to the Handbook.

### **Licences to be Gazetted**

New licence approvals, licence cancellations, suspension of licence, licence revocations, and change of name for licensees are generally gazetted; except for licensees under the Mutual Fund Law (2015 Revision).

On a monthly basis, a memorandum is sent to Government Information Services, by the relevant division, with regard to all new licence applications, terminations, and change of name to be gazetted. See Appendix E5 for details.

### **Payments Procedures**

The responsibility for the processing of all payments in relation to licensing and registration fees levied by the government and collected on behalf of the government by the Authority rests with the Accounts Officer in the Finance Division. Upon the receipt of a cheque by any representative of the Authority the cheque must be delivered immediately to the Accounts Officer for processing. All cheques must be logged to ensure accurate records are maintained at all times. The payment procedure process is detailed in Appendix E6.

### **Off-site Supervision**

The approach to off-site supervision/monitoring is compliance based. This is consistent with the on-site inspection work, which is risk based on an assessment of the licensee's compliance with applicable legislation, codes of practice and internationally accepted standards.

Off-site monitoring is complemented by on-site inspections and is an integral part of the supervisory process. While the on-site work is conducted at intervals determined by each supervisory division, the off-site monitoring process is continuous.

### **The Objectives of Off-site Monitoring**

- Review, understand and explain the genesis of all significant matters disclosed by the financial statements;
- Obtain satisfactory explanations for all material variances in the current financial statements compared with those of prior years;
- Ensure that the supervisory division employs a systematic and consistent approach to monitoring licensees;
- Detect early warning signs of potential problems in licensees;
- Assist on-site examiners in focusing their work on areas of high risk and the greatest weakness in each licensee;
- Assist the on-site examiners by following up with each licensee's compliance with any requirements made as a result of the on-site inspection;
- Determine the licensee's compliance with applicable laws, codes of practice, guidelines and directives; and
- Provide meaningful reports on individual licensees and the industry to the HOD.
- Consult with industry through an online portal for electronic submissions of required financial services information: Regulatory Enhanced Electronic Forms Submission (REEFS).
  - Prepare and submit financial filings

- Facilitate new applications and registrations
- Make change requests to existing licence information already on file
- Submit Director Name changes, business plan changes, address changes etc.
- Respond to queries received from licensees and the public
- Investigate customer complaints
- Process approvals and other requests from licensees

Attention is directed to specific risk indicators within each supervisory area. This is supplemented with prudential meetings – these generally cover strategic initiatives, adherence to standards and legislation, and a discussion of the financials. Discussions are usually high-level and may involve the licensee’s directors, staff, the parent institution, and other regulators.

Key off-site activities include:

- Vetting of licence applications;
- Approval of ownership changes;
- Vetting of directors, managers, and controllers;
- Analysis of financial returns;
- Review of audited financial returns;
- Review of correspondence such as management letters and internal control memorandum;
- Prudential meetings; and

### **Considerations**

The success of off-site monitoring depends heavily on the ability of licensees to provide timely and accurate information. In addition, the examiner must always use care, skill and judgment in interpreting the information.

In the supervisory manuals, examiners are alerted to the various considerations that should be taken into account in interpreting the information. Examiners will also consider quantitative factors as well as qualitative indicators such as management qualifications, reputation, and experience, in their assessments.

### **Conducting In-House Meetings with Licensee Representatives**

The Authority will, in most cases, aim to meet annually with representatives of entities licensed in the Cayman Islands to discuss their operations. In the case of entities that have minimal activities, such as some bank branches, the Authority may exempt them from annual meetings and require that they schedule meetings biennially.

The licensee and/or the Authority may arrange meetings. The internal procedure for the preparation and conduct of meetings at the Authority is detailed in Appendix F2.

## **Business Plan Changes**

To ensure that the Authority's information on licensees is accurate and reflective of the current business practices, an updated business plan is periodically requested along with a current list of directors. The business plan should normally include a summary description of the business conducted, key objectives and new products, staffing and other relevant information.

### **Review of Business Plans**

Once a new business plan has been filed with the Authority, it is the responsibility of the Analyst responsible for that particular licensee to review the business plan to ensure that the information provided is satisfactory. In the event that the business plan is considered insufficient, the Authority may request further information and will contact the licensee in writing to request the additional information required.

In reviewing the business plan the current list of directors must be compared against the Authority's existing records to ensure they agree. The regulatory laws require that unless exempted from such a requirement by the Authority, a licensee shall, before the appointment of a director or other senior officer, apply to the Authority for written approval of such appointment. In order to comply with the law the licensee must immediately send in the necessary information required for the Authority's approval of a director. The procedures for the approval of a director are detailed in Appendix E3 and E4.

The licensee is also required to advise the Authority of the resignation of any director in order to keep the Authority's records up to date.

### **The Approval of Names with Restricted Words**

The various regulatory laws either prohibit the use of titles of entities that connote the regulated business or make it an offence to use restricted words in names without the Authority's approval. Such approval is subject to the receipt of certain information to enable the Authority to assess whether the use of such words in a name will be misleading and to assess the potential for an applicant using the restricted word to hold itself out to the public in a misleading manner. Appendix F14 sets out the Authority's approach for considering applications to use restricted words.

### **Change of Name**

If a licensee wishes to change its name it must contact, in writing, the supervisory division responsible for the supervision of that entity. In determining whether the request will be granted the Change of Name procedures must be followed. These are detailed in Appendix F3.

## **The Approval of an Auditor**

The various regulatory laws require the Authority to approve the appointment of an auditor to a regulated entity. The approval process requires the Authority to assess the suitability of the proposed auditor through the application of the criteria as stated in Appendix F4.

## **Change of Auditors**

A licensee should outline in writing the reason(s) for wishing to remove their current auditor and submit the name of the proposed auditor. The Authority will check to confirm that the proposed new auditor is on the Authority's list of local approved auditors for various industry sectors and request confirmation of consent from the new auditor of their willingness to act for the entity. The Authority may also check with the current auditor for confirmation of the reason(s) for the change. The procedure is detailed in Appendix F5.

## **Change in Principal/Registered Office or Authorised Agent**

Upon receipt of a written request from a licensee to effect a change in its Agent, Registered/Principal Office, the Authority will ensure that the licensee has supplied all information prior to issuing the approval letter. The internal procedures are detailed in Appendix F6.

## **Letters of Good Standing**

The Authority receives requests from licensees and other interested parties for letters of good standing. The Authority will only issue a Letter of Good Standing when fees and filing of all supervisory reports are up to date. The procedure for the issue of a letter of good standing by the Authority is detailed in Appendix F7. Appendix F8 details the preparation of a letter of good standing when an extension for the filing of a supervisory report has been granted. Appendix F9 provides a sample Letter of Good Standing.

## **Data Collection and Dissemination**

The Authority and the financial industry need timely and reliable information about the financial condition of not only individual licensees, but also the entire financial system in order to conduct effective supervision and to make informed decisions.

This is achieved through the filing of regulatory reports and other prudential statistics that provide important information, and support the monitoring and assessing of licensees.

The various regulatory reports and statistical surveys are included in the Reporting Schedule listed in Appendix F10.

### Granting of Extensions for the Filing of Supervisory Reports

Part of the off-site supervision of the regulatory divisions involves the analysis of quarterly and annual returns. An up-to-date timetable for the submission of such returns is also available in Appendix F10.

Pursuant to the regulatory laws, licensees are required to submit on an annual basis audited accounts of its operations and regular returns as specified by the Authority. The Authority may grant extensions to licensees for the filing of audited accounts or supervisory reports.

Licensees should adhere to the Policy on Prudential Reports and Statistical Returns. This is posted on the Authority's website at [http://www.cimoney.com.ky/regulatory\\_framework/](http://www.cimoney.com.ky/regulatory_framework/). However, whilst the Authority encourages all licensees to submit their returns by the reporting deadline, it recognises there may be situations where this is not possible. In such situations the Authority requires licensees to notify the Authority and request a formal extension in writing prior to the deadline. Extensions are available in 30 day segments. Failure to request an extension in a timely manner will result in a late filing fee being levied and/or the refusal of the Authority to issue a letter of good standing. See Appendix F11 for the Policy on Granting of Extensions for the Filing of Supervisory Reports.

### Procedures on Outstanding Statutory Returns

The Authority monitors the submission of all statutory returns electronically and will notify any licensee who has not filed their returns and has not requested and been granted an extension to the reporting period.

See Appendix F12 for Procedures on Outstanding Statutory Returns.

### Change in Financial Year-End

A licensee may request to change its financial year-end. This should be made in writing and state the reasons for the change of their current financial year-end. The letter should further state the new financial year-end and contain confirmation of the change by the auditor. In the case of a mutual fund administrator a copy of the director/shareholder resolution is required. The procedure for processing a change of a financial year-end request is provided in Appendix F13.

## **On-Site Inspection**

The on-site inspection process is fundamental to the effectiveness of the Authority's regulatory function, post licensing. In setting out the inspection procedures the Authority aims to:

- Provide a clear statement of the Authority’s policies, standards and procedures for the inspection of licensees;
- Provide guidance to supervisory personnel;
- Promote the consistent application of examination/inspection procedures; and
- Enhance the quality and effectiveness of on-site examinations.

Due to the diversity of licensees, onsite examiners will draw on their professional experience and judgement and will tailor the application of procedures outlined in the Handbook to suit the specific circumstances of the licensee being inspected.

### **The Role of Examiners**

Each on-site inspection is assigned a team of at least two inspectors. On-site examiners are expected to have a high level of familiarization with licensee’s operations to ensure that they are operating in a sound and prudent manner. Therefore, one of the primary roles of the examiners, are to assist the Authority with identifying areas of weaknesses and deficiencies in the controls and systems of licensees.

On-site examiners responsibilities include:

- Inspection planning and coordination with licensees
- Completion of all pre-inspection work and analysis
- On-site testing
- Discussing inspection findings with licensee’s management
- Writing the inspection report

It is important to note that if at any point during the on-site inspection process any weaknesses or deficiencies that are identified, the examiners are to immediately inform the HOD and provide feedback as to what appropriate corrective/remedial action should be taken by the licensee. Additionally, the required corrective action is to be communicated to the licensee; once this has taken place the examiners and/or other supervisory personnel monitor the progress of the licensee and provide regular updates to the HOD to ensure that appropriate remedial action has been taken.

Examiners are representatives of the Authority and have an obligation to conduct their business in a manner that encourages trust and confidence. The information obtained during the on-site inspection process regarding the company and its stakeholders remains confidential between the company and the Authority.

Apart of the off-site supervisory process includes monitoring the licensee’s progress in implementing the requirements from the on-site inspection. This places the examiners in a position to determine whether or not the licensee is compliant with the necessary policies and also, if the licensee has included the provisions into their framework.

The Confidentiality Relationships Preservation Law (2015 Revision), the MAL and the internal Business Conduct policy are binding on all examiners.

### **Business Conduct of Authority Staff - Conflicts of Interest**

All employees of the Authority are expected to conduct their private and business affairs in such a manner and with such ethics and integrity that no conflict of interest can be construed. The work of the Authority must be carried out in such an environment that is free from any suggestions or improper influence.

A conflict of interest occurs when an employee's private interest interferes in any way with the interests of the Authority as a whole. A conflict of interest shall be deemed to exist whenever an employee has a financial interest, direct or indirect, in any principal dealing with the Authority, and that interest is of such extent or nature that it might reasonably affect his/her judgement or decisions exercised on behalf of the Authority.

All interests must be declared upon commencement of employment and at the beginning of every calendar year thereafter by completing the Individual Notice of Interest Form and provide the relevant details to the Human Resources Division. Additionally, employees must immediately notify the Head of the Human Resources Divisions of all changes in the information previously disclosed in the Individual Notice of Interest Form and/or when changes result in a conflict of interest that did not previously exist.

### **Use of Checklists**

Each supervisory division utilises a number of checklists during the on-site inspection process in order to provide a standardised framework by which the inspection team can evaluate in an objective manner the condition and prospects of the licensee. The checklists are structured to enable examiners to determine that the licensee adheres to sound practices and procedures and are directed towards the critical areas of a licensee's administration and operations.

The division-specific procedures and checklists used during the inspection process will be provided in a supervisory division supplement to the Handbook entitled "On-site Inspection Procedures" under the respective supervisory division section. Guidance is provided on:

- The determination of the scope of full scope and limited scope inspections;
- The determination of the procedures to be used in the inspection of specific areas of the licensee;
- The evaluation of written policies, practices and procedures, the degree of compliance with them, and the adequacy of the system of internal controls;
- The evaluation of the quality of the work performed by internal and external auditors;
- The evaluation of the performance of management and directors; and

- The formulation of objective criteria for evaluating the condition and quality of the licensee and its management.

The inspection procedure is divided into five separate stages, namely:

- Risk assessment and profiling;
- Pre-inspection planning and analysis;
- On-site visit;
- Post inspection assessment and reporting; and
- Post inspection follow-up on compliance with recommendations.

### **Types of On-site Inspections**

There are three categories of on-site inspection, namely:

- A Full Scope Inspection.
- A Limited Scope Inspection.
- A Follow-up Inspection.

#### Full Scope Inspection

A full scope inspection will usually involve a review of all lines of business undertaken by the licensee along with all areas of operations. The contents of a full inspection for each supervisory division are detailed in the supervisory division “On-site Inspection Procedures” supplement to the Handbook.

#### Limited Scope Inspection

A limited scope inspection focuses on a particular segment(s) of a licensee’s business operations or a particular theme that might be of interest to the Authority, such as AML/CFT or IT systems.

While the reasons for carrying out a limited scope inspection can vary, ordinarily such an inspection will be desirable in the following circumstances:

- Unusual results are found following off-site analysis of annual / quarterly financial statements;
- Follow-up on findings of a prior inspection report;
- Unusual complaint volume either in respect of one line of business, or in respect of a particular departmental function;
- Concerns expressed by stakeholders; and
- Recent developments in the licensee e.g. change in a key / management position, acquisition of a large block of business.

A limited scope inspection may alternatively consist of a review of a licensee’s adherence to the MLRs.

### Follow-up Inspection

Follow-up inspections are effectively limited scope inspections that are based on specific issues. The purpose is to determine if the licensee is in compliance with the previous inspection report requirements.

### **The Objectives of an On-site Inspection**

1. The principal objectives of the Inspection Report (“the Report”) are to –
  - (1) inform the Authority, and the licensee's directors and management, of matters requiring attention and the priority to be given to these matters ; and
  - (2) assist the licensee to effect timely correction of those matters.
2. In order to meet these objectives the Report must address the many and varied aspects of the onsite inspection. For this reason, accurate and timely reporting of facts is essential to the proper understanding, and ultimately the satisfactory correction of any deficiencies in the licensee’s operations, by either the licensee, its directors and/or senior management.
3. The Report is sent to the licensee's board of directors. Its primary purpose is to focus the attention of and require action by the directors and management on matters which the Authority has identified as warranting corrective attention.
4. In that regard, any deficiency of a regulatory or statutory nature will be addressed through “Requirements”. Matters Requiring Immediate Attention (“MRIA”) in the Report will be structured as “High Priorities” and Matters Requiring Attention (“MRA”) in the Report will be structured into “Medium” and/or “Low Priorities”. Where the examiner identifies Matters Requiring Immediate Attention, the Authority will direct the licensee, its directors or management to address such matters immediately. Where the examiner identifies Matters Requiring Attention, the Authority will direct the licensee to address such matters within a specified time.
5. *High Priority* - MRIA, can be any one or more findings that-
  - (1) demonstrate a mismatch or inconsistency in the licensee’s risk appetite and controls;
  - (2) have the potential to expose the licensee to severe unmitigated risks;

- (3) constitute a violation of or non-compliance with any law, regulation, Rule, or Statement of Guidance;
- (4) constitute policy or procedural deficiencies;
- (5) have the potential to pose significant risk to the safety and soundness of the licensee's operations and the jurisdiction;
- (6) are repeat findings that have escalated in importance due to insufficient attention or inaction by the licensee, its directors or management;
- (7) are recurring findings requiring attention, regardless of their nature;
- (8) are isolated exceptions impacting individual accounts or policies, if the account or policy has sustained a loss or is likely to sustain a loss; and
- (9) have the potential to cause significant consumer harm.

A MRIA will remain an open issue until resolution, and examiner(s) confirm the licensee's corrective actions have been fully carried out.

*Required Language: The Authority's examiners are expected to use the standardized language below to communicate MRIsAs to the board of directors (or executive-level committee of the board):*

*Requirement (High Priority - MRIA):*

- *"The Licensee's board of directors (or executive-level committee of the board), or entity organization is required to immediately..."*

The expected timeframe to address "high priority" requirements is generally short and immediate, within 3 months (unless extended with the consent of the Authority), in the case of heightened safety-and-soundness or consumer compliance risk. For "high priorities" that are necessary to preserve or restore the viability of the licensee, the timeframe should take into account any potential losses to consumers, including the possibility that a delay in action will increase the potential for loss or the cost of the resolution.

6. *Medium Priority - MRA* can be any one or more that-

- (1) the Authority has identified as important, such as ineffective application or partial compliance with a Rule or SOG, and which the

Authority requires the licensee, its directors or management to address over a reasonable and specified period of time;

- (2) are technical or minor violations, where corrective action is assured;
- (3) are isolated exceptions, other than of the type listed in (5) or (8) above, where management has agreed to take appropriate corrective action; unless the exceptions are symptomatic of an overall weakness, in which case the Authority will be entitled to treat them as MRIA .

7. *Low Priority* - MRA can be any one or more that-

- (1) are minor violations, where corrective action is assured;
- (2) are isolated exceptions, other than of the type listed in (5), (6), or (7) or (8) under High Priority above, where management has agreed to take appropriate corrective action; unless the exceptions are symptomatic of an overall weakness, in which case the Authority will be entitled to treat them as MRIA.

MRAs will remain an open issue until resolution and examiners confirm the organization's corrective actions have been fully carried out. If the licensee's organization does not adequately address a MRA in a timely manner, the Authority may elevate this to an MRIA. Similarly, a change in circumstances, environment, or strategy can also lead to an MRA becoming an MRIA. The key distinction between MRIs and MRAs is the nature and severity of matters requiring corrective action, as well as the immediacy with which the licensee must begin and complete corrective actions.

*Required Language: The Authority's examiners are expected to use the standardized language below to communicate MRAs to the board of directors (or executive-level committee of the board):*

*Requirements (Medium and/or Low Priority):*

- *"The Licensee's board of directors (or executive-level committee of the board), or entity organization is required to..."*

Communications to licensees about MRAs must specify a timeframe within which the corrective action is expected to be completed. The timeframe for Medium and Low priorities are usually within 6 to 12 months respectively.

8. The contents of the Report will include the examiner's finding(s) and the Authority's instructions for corrective action. The view of the management of the regulated entity, whether representing assurances of correction or disagreement with the examiner's position, should also be stated in the Report.

9. As a general rule, the Report will first be sent out in draft form to allow opportunity for response and comment on the accuracy of the findings within the Report. Judgement will play a major role in the amendment of the Report.
10. Once a Report is finalized, the Authority will require licensees to submit an action plan that identifies remedial actions to be completed within specified timeframes for its MRAs and MRAs and report on a monthly basis on their progress against that plan.
11. For inspections where there were no material deficiencies identified or in the case of some limited scope inspections, there may not be formal reports. In these circumstances, the results of the inspection may be communicated via letters.

### **Post-Inspection**

At the conclusion of the examination the Authority lead examiner will:

- Review the work performed by the Authority Inspection Staff (if not previously reviewed)
- Organize the overall conclusions, and verify that all assertions of facts or opinions are specifically substantiated in the checklist(s) and any accompanying work papers
- Formulate general comments and conclusions relative to the licensee's overall condition, and specific comments and conclusions relative to particular subject areas, practices, etc.
- Present findings to the HOD
- Present the results of the inspection to the management of the licensee.

### **Follow-up and On-going Monitoring**

Once the licensee has been provided with the inspection report it is the responsibility of the Authority to ensure that the institution implements the recommendations. The licensee should be advised of an appropriate time frame in which to effect the implementation. The inspection team will then conduct a follow-up visit to review the progress the licensee has made towards achieving the recommendations.

### **Enforcement**

The Authority's effective and proportionate use of its powers to enforce the requirements of the regulatory laws and other relevant legislation (for example, the MLRs) plays an important role in pursuit of its regulatory objectives.

The Authority has a range of regulatory tools available to help it meet its regulatory objectives. Where a licensee has failed to comply with the legislative requirements, it may be appropriate to address this without the need for formal disciplinary or other enforcement action. In those circumstances where the Authority does take disciplinary action in respect of the contravention of the regulations, the effective use of the enforcement powers under the regulatory laws, where necessary, will play an important role in buttressing the Authority's pursuit of its regulatory objectives.

There are a number of principles underlying the Authority's approach to the exercise of its enforcement powers:

- The effectiveness of the regulatory regime depends to a significant extent on the maintenance of an open and co-operative relationship between the Authority and those whom it regulates
- The Authority will seek to exercise its enforcement power in a manner that is transparent, proportionate, and consistent with its publicly stated policies and guidelines
- The Authority will seek to ensure the fair treatment of those who are subject to the exercise of its enforcement powers

Enforcement options available to the Authority include:

- Suspension of the licence of a licensee and preservation of its records
- Revocation of the licence of a licensee
- Requiring the substitution of a director, operator, senior officer, general partner, promoter, insurance manager or shareholder of the licensee (as applicable)
- Appointing a person to assume control of the affairs of the licensee
- Appointing a person to advise the licensee on the proper conduct of its affairs
- Applying to the Grand Court of the Cayman Islands for an order directing that:-
  - The company to be wound up in accordance with the Companies Law
  - The trustee wind up the trust; or,
  - The partnership be dissolved

## **Recognised Stock Exchanges**

The Mutual Funds Law, the Banks and Trust Companies Law, the Insurance Law, the Companies Management Law and the Securities Investment Business Law all refer to stock exchanges that may be “approved” or “recognised”. The Authority has issued a Regulatory Policy – Approved Stock Exchanges that outlines the criteria used to determine whether a stock exchange is “approved” or “recognised” for the purposes of these laws. This Regulatory Policy is available on the Authority's website.

Pursuant to the Regulatory Policy – Approved Stock exchanges, the Authority also has the power to approve other stock exchanges that do not meet the criteria but that it believes should be approved based on other considerations. Finally, in certain circumstances, the Authority can state that a stock exchange is not approved despite meeting the criteria for approval.

The Authority has posted an unofficial list of approved stock exchanges on its website. However, the list is for illustrative purposes only and may not be exhaustive. Users should consult the criteria in the Regulatory Policy – Approved Stock Exchanges to determine whether a stock exchange is approved.

## **Anti-Money Laundering Procedures**

### **Background**

The Cayman Islands government has undertaken a far-reaching programme to enforce measures against money laundering. The government is committed to cooperating with international efforts and standards for combating money laundering, and the financing of terrorism as one aspect of its determination to prevent criminals from using the financial industry of the Cayman Islands.

The Authority is responsible for monitoring compliance with the MLRs under section 6(1) (b) (ii) of the MAL. Under section 4(9) of the POCL, The Governor in Cabinet may assign to the FRA the responsibility for monitoring compliance with the MLRs for persons conducting “relevant financial business” that are not otherwise subject to such monitoring by the Authority.

In addition to the MLRs, examiners should take note of the AML Guidance Notes.

### **Areas of Concern**

Historically money laundering has been concentrated on the traditional banking sector. However criminals have responded to the measures taken by banks and have sought to convert illegally earned funds or mix them with legitimate income before they enter the banking system, thus making them harder to detect. Non-bank financial institutions have become increasingly vulnerable to being used for money laundering.

The highest risk category relates to those products or services where unlimited third party funds can be freely received, or where funds can be regularly paid to, or received from third parties without evidence of identity of the third parties being taken. For example, products offering money transfer facilities through current accounts, telegraphic or wire transfers, deposits from third parties, cash withdrawals, credit and debit cards or other means.

Some of the lowest risk products are those in which funds can only be received from a named investor by means of a payment from an account held in the name of the investor, and where

the funds can only be returned to the named investor. No third party funding or payments are possible. However, despite their apparent low risk, they are not immune from money laundering. The geographical location of a licensee's customer base will also affect the money laundering risk analysis.

Licensees that have a significant proportion of their customer base located in countries:

- Without equivalent money laundering strategies; or
- Where cash is the normal medium of exchange; or
- Where there is a politically unstable regime with high levels of public or private sector corruption; or
- That are known to be drug producing or drug transit countries,

All licensees will need to ensure that additional KYC and/or monitoring procedures are in place to manage the enhanced risks of money laundering. Countries with equivalent AML strategies are listed in Schedule 3 of the MLR. This list represents countries that are considered by the Authority to have enacted legislation to safeguard their financial systems and to combat money laundering to the required standard and equivalent to legislation enacted in the Cayman Islands. However, the examiner should keep in mind that the criminal element is frequently able to breach the money laundering safeguards enacted by these countries.

### **Purpose**

The purpose of this section of the Handbook is to set out the basic procedures that are followed in the conduct of an on-site inspection with respect to the Authority's assessment of an institution's KYC policies and procedures regarding money-laundering counter-measures.

In conducting the inspection, examiners will take into account the specific circumstances of an institution and may adjust the scope of the inspection accordingly. If necessary, the examiner may consider engaging outside assistance to scope out a detailed money laundering review to be conducted by the institution's external auditors pursuant to the relevant section of the regulatory laws.

### **The Duty of Vigilance**

All institutions should be constantly vigilant in deterring criminals from engaging in any form of money laundering. Although the task of detecting crime falls to law enforcement agencies, licensees will be called upon to assist law enforcement agencies in the avoidance and detection of money laundering activities and to react in accordance with the law in the reporting of knowledge or suspicion of such. Licensees should also note the information gathering and investigative powers of the Authority as outlined in the Enforcement Manual,

Institutions are performing their duty of vigilance by ensuring that the following systems are in place:

- Procedures for the determination and confirmation of the true identity of customers requesting their services and the nature of business that the customer expects to conduct
- Ongoing monitoring of business relationships
- The recognition and reporting of suspicious activities to the FRA
- Maintenance of records for the minimum prescribed period of time, currently five years
- Training of key staff
- Close liaison with the FRA in relation to suspicious activity reporting and with the Authority on matters concerning vigilance policy and systems (If applicable); and
- Ensure that internal auditing and compliance departments regularly monitor and make recommendations for the update of vigilance systems and that appropriate action is taken by the institution's board of directors or senior management to address deficiencies

### **Internal Compliance Programmes and Procedures**

Licenses are required to establish and maintain adequate internal procedures to assure and monitor compliance with the MLR.

The sophistication and comprehensiveness of the institution's internal compliance programme will be influenced by the type of activities engaged in by the institution and the quantity of transactions. For example, a "wholesale" banking institution that conducts no cash transactions must have an internal compliance programme that ensures that, should a transaction be presented to the institution, the institution's employees will have sufficient training to understand that the transaction may be subject to the MLRs and the employee has the means to obtain additional instructions from manuals, senior staff, or the MLRO.

As an alternative, an institution that conducts a retail operation must have specific and comprehensive internal compliance procedures. All members throughout the group should maintain a programme to detect, and where necessary, report unusual or suspicious activities possibly related to money laundering.

While the Cayman licensed entity must satisfy the AML requirements of the Cayman Islands, institutions operating on a group basis should adhere to the most stringent AML requirements whether those be from the home country supervisor, head office, or the Cayman licensed entity.

### **Internal Audit/Independent Review**

As a matter of good practice, licenses should provide for independent testing of KYC compliance to be conducted by personnel or an outside party.

In conducting the inspection, the examiner should address the following areas:

- Review the institution's written internal audit/ independent review procedures, and determine that the internal audit function provides for review for compliance with the POCL and related AML laws and regulations. If the institution does not have an internal audit function, determine that a programme of management reviews or self audits has been established which include the requirements of the POCL and MLR.
- If violations or serious deficiencies were noted during the internal audit review, does correspondence indicate that appropriate corrective action was taken?
- Do the findings in the previous inspection report, in areas other than KYC compliance, indicate adequate internal controls and audit procedures?

### **External Auditors**

As part of the bilateral discussions held with the institution's external auditors during the inspection, the examiner should endeavour to ascertain whether there are any significant control weaknesses. Even though the external auditors focus primarily on the financial statements, often they can shed light on an institution's business and control culture. The examiner should question:

- Do the findings in the Management Letter or Internal Control Memorandum (if applicable) issued by the external auditors indicate any deficiencies in control procedures regarding KYC or internal control procedures in general?
- If violations or deficiencies were noted, has the institution taken appropriate corrective action?

### **Monitoring and Record Keeping**

Institutions should keep appropriate evidence of client identification, account opening or new business documentation. Adequate records identifying relevant financial transactions should be kept for a period of five years following the closing of an account, the end of the transaction, or the termination of the business relationship. In the case of transactions such as Trust transactions, the institution should have in place procedures to retain records for longer periods. The licensee should maintain adequate records such that a client's transactions can be isolated, the nature of the transaction identified, its form, and where it took place.

### **Money Laundering Reporting Officer**

Pursuant to Regulation 14 of the MLRs, all licensees are required to appoint a suitably qualified and experienced officer of their institution to whom suspicious activity reports must be made by staff. The MLRO is usually a senior member of staff carrying out a Compliance, Audit or Legal role within the licensees' business. Licensees are also expected to appoint a Deputy, who should be a person of similar status and experience to the MLRO.

The MLRO should be well versed in the different types of transactions, which the institution handles and which may give rise to opportunities for money laundering.

The MLRO (and also Deputy MLRO) should receive in-depth training on all aspects of the POCL, the MLR, and internal policies. They should also receive appropriate initial and ongoing instruction on the determination and reporting of suspicious activities, on the feedback arrangements, and on new trends of criminal activity.

## **Training**

Licensees should ensure that all staff (in accordance with Section 5(1) of the MLRs) receive training on money laundering prevention on a regular basis, ensure all staff fully understand the procedures and their importance, and ensure that they fully understand that they will be committing criminal offences if they contravene the provisions of the legislation.

Although general provisions are made in Section 5(1) of the MLRs, they do not specify the exact nature of training to be given to staff, and therefore each licensee can tailor its training programmes to suit its own needs, depending on size, resources and the type of business it undertakes. Smaller organisations with no in-house training function may wish to approach third parties such as specialist training agencies, firms of attorneys or legal practitioners, or the major firms of accountants or management consultants to design and conduct their training. Training should be structured to ensure compliance with all of the requirements of the applicable legislation.

The organisation, record keeping, and control of the training plan should normally be undertaken by the Compliance Department. They may also be involved in delivery of courses with the MLRO and/or others. The content of training courses should be the ultimate responsibility of the MLRO. It is recommended that staff sign annually to the effect that they have read the staff handbook against money laundering and that they have participated in AML training. The basic objectives of a training programme are given in Appendix G1.

## **The Role of the Authority**

The Authority is responsible for ensuring that its licensees and persons/entities conducting “relevant financial business” as defined in Schedule 2 of the MLR are in compliance with the MLR. The legal authority to do so is contained in section 6(1) of the MAL.

## **Off-Site Monitoring**

The Authority monitors adherence of its licensees’ to the MLR through both off-site monitoring and on-site inspection.

Examiners should ensure that adequate procedures are in place to identify suspicious activities / combat money laundering. Written procedural manuals / guidelines should exist

providing sufficient detail to enable employees to perform their functions in accordance with the goals / direction of management and in line with relevant legislation.

The examiner should determine if the institution exhibits a risk profile suggestive of:

- Non-compliance with the applicable regulatory law, POCL, and MLR;
- Ineffective internal compliance; or
- Engaging in possible money laundering activities.

### **Access to information**

Inspection staff has complete access to all information held by the institution and pursuant to section 34(8) of the MAL. Access to information held by connected persons or to any other person reasonably believed to have information relevant to an enquiry by the Authority are also subject to review and may be requested.

### **On-site Inspection**

In conducting the on-site inspection, the examiner should address the following areas:

- Has the institution established adequate internal compliance programmes and procedures?
- Has the institution developed a written compliance programme?
- Does the written compliance programme provide for:
  - A system of internal controls to ensure ongoing compliance.
  - Designation of a qualified individual(s) to act as the MLRO responsible for coordinating and monitoring day-to-day compliance.
  - Training for appropriate personnel as set out in section (5)(1)(c) of the MLR.
  - Are all suspicious transactions reported to the MLRO?
  - Is all staff aware of who the MLRO is? Deputy MLRO?
  - Is the MLRO represented on the Compliance Association?
  - Was the compliance programme approved by the institution's board of directors and approval noted in the minutes? If a subsidiary or branch institution, was the compliance programme approved at the head office or home country level?
  - Does the institution provide an annual report to its board of directors or senior management covering its money laundering measures compliance programme?

Even if an institution has a documented viable internal compliance programme, the examiner must verify that the internal compliance programme is being complied with. Deficiencies may be discovered during the course of this compliance review that may evidence a lack of, or the complete omission, of adequate internal compliance procedures.

Inspection staff should confirm that the following basic questions have been addressed in the annual report to the board of directors or, in the case of a branch, to the appropriate Head Office division.

- Are AML procedures in place?
- Are AML procedures being followed?
- Do AML procedures comply with all policies, controls and statutory requirements?
- Does the institution's written compliance programme include procedural guidelines for the detection, prevention and reporting of suspicious transactions related to money laundering activities?
- Does the institution's compliance programme include written procedural guidelines for meeting the reporting and record keeping requirements of the POCL, MLR and AML Guidance Notes?
- Do the procedural guidelines include provisions for the retention of either the original, microfilm, copy or other reproduction of the items listed below, and is each item retained for a period of at least five years?

### **Identification Procedures**

The examiner will check that the licensee has appropriate procedures for the identification and verification of the identity of their clients. During the inspection, the examiner will review the licensee's procedures according to the list contained in Appendix G2 and the licensees' monitoring and record keeping procedures (see Appendix G3).

### **The Examiner's Assessment of Staff Training**

During the inspection the examiner will assess the appropriateness of staff training and will focus on two fundamental questions:

- Is the institution's training programme commensurate with its type of business and volume of transactions?
- Do staff, including, senior management personnel, receive AML training at regular intervals?

In making this assessment, the examiner will review:

- The records of any training programme(s). These should include:
  - Details of the content of the training programmes provided;
  - Names of staff who have received the training;
  - Date on which the training was delivered;
  - Results of any testing carried out to measure staff understanding of the money laundering requirements; and
  - An on-going training plan.
- Whether the licensee has issued a clear statement of policies in relation to AML procedures.

- If this statement has been communicated in writing to all management and relevant staff, and whether it is reviewed on a regular basis.
- If there is a plan for on-going training and refresher courses.

### Reporting of Suspicious Transactions

In conducting the inspection, the examiner should address the following areas:

- Has the institution designated a MLRO at a sufficiently senior level?
- Is the MLRO aware of where to file suspicious activity reports (SAR)?
- Does the institution maintain a log for SARs? If no, suggest that it would be best practice to maintain a log.

Licenses must establish a written internal procedures manual so that, in the event of a suspicious activity being discovered, all staff are aware of the reporting chain and the procedures to follow. Such manuals should be periodically updated to reflect any legislative changes. Appendix G4 contains the examiners checklist for reviewing licensees' Suspicious Activity Reporting Procedures.

The inspection team will use the AML Procedures checklist to record the results found upon inspection of this area. A copy of the checklist used by the Insurance Division for Class "A" Insurance Companies and the checklist for Class "B" Insurance Companies are included as Appendix G5 and G6 respectively. Appendix G7 provides examples of suspicious activities in the banking sector.

### **Inspection Reporting**

In compiling the report, the examiner will make an assessment of whether the licensee is complying with the MLR. To make an informed judgment, the examiner should review the licensee's policies and procedures, operations and testing of sufficient files and transactions to be able to report and make a determination of an institution's compliance with the MLR.

Included in the report are assessments of the licensee's:

- Policies and procedures manuals to prevent money laundering
- Systems to prevent money laundering
- Training to prevent money laundering
- Client identification procedures
- Record keeping procedures
- Internal reporting procedures
- Reporting of suspicious transactions

In the event, that the examiner considers that an institution is not in compliance with the MLR, the results should be promptly reported to the HOD.

## **Reporting of Suspicious Transactions by the Authority**

Section 16(3) of the MLR requires a person employed by the Authority who (a) obtains any information whilst acting in the course of any investigation, or discharging and functions, to which his appointment or authorization relates; and (b) is of the opinion that the information indicates that a person has or may have been engaged in money laundering shall, as soon as reasonably practicable, disclose the information to the Reporting Authority or to the Authority's MLRO - the Head of Compliance.

Any transactions identified as suspicious should not be discussed with the institution so as not to contravene section 139 of the POCL dealing with tipping off. Once the matter has been disclosed to the MLRO, guidance should be obtained from the HOD regarding any communication with the institution regarding the transactions and non-compliance with the MLR. The Authority's procedure for suspicious activity reporting is included in Appendix G7 and the report form for suspicion of money laundering in Appendix G8.

## **Financial Reporting Authority**

As part of the inspection, the HOD/Deputy Head may conduct a check with the FRA to ascertain whether there is suspicious or alleged illegal activity surrounding an institution. The FRA is appointed by the Governor-in-Cabinet under section 3(1) of POCL. The FRA is the body to which all suspicious activity reports must be sent.

## **Other Anti-Money Laundering Issues**

In addition to the monitoring of licensees' adherence to the MLR the Authority is also responsible for the issuance and amendment of any statements of guidance concerning the requirements of the MLR. This includes any amendments to the AML Guidance Notes and to the list of Schedule 3 countries issued under the MLR.

### **Schedule 3 Criteria**

The Schedule 3 list of countries and territories are those considered to have money laundering legislation that is equivalent to or more rigorous than the money laundering regulations in the Cayman Islands and consequently provides a level of comfort to licensees and persons/entities conducting relevant financial business with persons and entities based in these countries/territories.

Pursuant to regulation 9(5) (b) of MLRs is a list of countries and territories with equivalent AML legislation, commonly known as the "Schedule 3 list". This is subject to continuous review. The Governor in Council (the Cabinet) makes amendments to the Regulations.

In order to determine if a country or territory should be included on the Schedule 3 list, the criteria detailed in Appendix G10 are applied.

### **Memorandum to Board for Additions to Schedule 3**

All requests for additions to the Schedule 3 list of countries and territories are reviewed and appropriate research is undertaken in order to ascertain if the country/territory satisfies the Schedule 3 criteria. Following review by the MC, a memorandum is then forwarded to the Board outlining the commercial need for the addition, if the proposed country/territory is a member of any international associations and a review of the AML legislation of the country/territory is deemed acceptable. The template memorandum to the Board is included in Appendix G11.