

ALPA

LPB Fundamental Provisions

1. Registrations of All Law Firms and Caymanian ownership/control requirement of Cayman Islands Law Firms

- (a) All Law Firms/Law Companies/Legal Advices Businesses (including sole practitioners) operating in Cayman must be registered with the Cayman Islands Legal Profession Regulatory Authority ("CILPRA"). 100% Caymanian owned and controlled firms should be granted registration as of right, and partly owned Caymanian firms should have to satisfy CILPRA that they are compliant with Caymanian Ownership/Control requirements.
- (b) Caymanian participation should be 60% Caymanian owned and controlled, unless temporarily exempted as below; and
- (c) Exemptions should only be possible via grant of temporary exemption by Cabinet (after consulting CILPRA) for a limited transitional period for existing firms that do not meet such criteria. Such exemption should be based on justifiable circumstances and upon proof of the firm's efforts to comply with this requirement by employing and training Caymanians. – 6 years to get to 51%, if less than 51%, and another 6 years to get to 60%, if less than 60% - total of 12 years to get to full compliance.
- (d) All new "law firms" (of whatever type or entity) after commencement must meet Caymanian 60%/40% requirements.¹

2. Overseas Practitioners/Certification and Qualifications

- (a) There should be no "grandfathering in" of current Overseas Practitioners ("OPs") currently holding themselves out as "Cayman attorneys" who have no current Cayman Islands practicing certificates. The relevant law firm must apply to have any OP in their employ or in the employ of one of their overseas affiliates registered and must satisfy all of the relevant criteria to practice Cayman Law based on all of the same criteria as if they were applying for a Practicing Certificate in Cayman.
- (b) Overseas Practicing Certificates ("OPCs") shall be required for each and every Overseas Practitioners, who are employed by, affiliated with or instructed by, a Cayman Registered Firm. All holders of OPCs shall be bound by the relevant Cayman principal legislation and any regulations made thereunder, including the same code of conduct, as if they were practicing in the Cayman

¹ Comment: No arrangement, agreement, artifice or device shall be permitted to circumvent the control and ownership requirements.

All firms must be Caymanian controlled, at least 60% of the entity beneficially owned by Caymanians and at least 60% of its directors (if company)/controllers are Caymanian.

jurisdiction. There shall be established a Register of all OPC's which Register shall be open for public inspection.* [JSJ NOTE: This makes the section on transparency redundant)

- (c) There must be a quota of OPCs for each firm, based on a sensible, balanced ratio of Caymanian Practitioners ("CPs") to Ops. (For example, 1:1 Caymanian attorneys or articled clerks to every OPs.)
- (d) Every OP must, at a minimum, in addition to holding a valid Cayman Practicing Certificate, also hold a valid practicing certificate and any necessary licence or work permit in the jurisdiction in which they are resident so as to ensure they are subject to regulation/sanction by the relevant authorities of the jurisdiction they are operating in.
- (e) OPC annual fee must at least be equal to CPC annual practicing certificate fee (\$2,000) PLUS relevant work permit fee. The basis for this is that anything less than that would obviously incentivized outsourcing (bearing in mind that overseas practitioners do not contribute anything to the Cayman economy).
- (f) Any holder of an OPC must have a minimum of 5 years PQE and relevant training and other qualifications for ordinary Cayman Islands practicing certificate.
- (g) Open court admission to the Grand Court and granting of first OPC should take place in the Cayman Islands (video link not permitted).²
- (h) No OP should be permitted to undertake Cayman Islands litigation – OPs shall have no right to appear before any Court, tribunal or board (or the like) of the Cayman Islands.³
- (i) OPs shall be restricted to legal services related to CIMA licensed and regulated entities/Companies registry (such as, Financial Services Division substance) matters.⁴
- (j) OP shall have a supervising Cayman registered attorney based in the same jurisdiction as the OP, who is either Caymanian or a permanent resident/RERC holder with 10 years PQE within Cayman. They must countersign application for OPC and commit to being within the jurisdiction for the same period of the OPC. Supervising attorney shall be limited to 10 OPs.⁵

² Comment: This will be a boost the economy, it will ensure some connection to the Island, it will ensure for AML/CTF purposes that persons holding will need to come within the jurisdiction.

³ Comment: This is to prevent a growing trend of practitioners to appear via video conference. It is entirely possible that in the future all litigation could be conducted via video-link and no Cayman-based practitioners will be involved. Also OPs should not be permitted to obtain additional limited admission which could circumvent the law.

⁴ Comment: This is to prevent competition in local work, such as civil and family, estate, immigration, land, strata, planning. Administrative, non-financial services licensing, etc.

⁵ Comment: This is to ensure compliance with Cayman Law and to ensure AML compliance.

- (k) OPC limited to 5 years renewable yearly with payment of fees and statutory declaration. A new OPC shall only be issued to a previous holder if the relevant law firm can demonstrate that there is no similarly qualified Caymanian to take his place and that all due diligence has been exercised in that regard by the law firm.
- (l) OPC shall cease if employment ceases – obligation on both “law firm” and OP to notify WORC/Immigration, Court and Regulatory Body of ceasing employment. OPC non-transferrable to new employer. If change of employment must apply for a new OPC.
- (m) Each OPC application shall take place in the Cayman Islands with the applicant being physically present in jurisdiction in order to obtain grant of OPC and to collect certificate.⁶
- (n) Any OP shall be automatically struck from the OPC Register if for any reason he ceases to be competent to continue to practice Cayman Law.

3. Consultation/Composition of Regulatory Body (Both AML and Attorney Regulation)

- (a) CILPRA must be properly created, independent statutory authority, NOT a “self-regulatory” private company like “CILPA”.
- (b) Must conform to requirements of Public Authorities Law/accepted standards of good governance, transparency and free of any conflicts of interests; and
- (c) Council of CILPRA should be comprised of appointees to Council by the CJ, AG, CILPA and ALPA – ALL Council members MUST be Caymanian.

4. Holding oneself out to be Cayman Attorney

- (a) Unless being admitted to the Grand Court and holding a current Cayman practicing certificate (OPC or otherwise) it shall be an offence to:
 - (i) claim to be competent in Cayman Islands Law, and/or
 - (ii) hold oneself out as being a Caymanian attorney.

5. Whistleblowers

- (a) No person may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment-related obligation, for releasing information relating to a contravention of this law.⁷

⁶ Comment: This is to ensure all OPs come within the jurisdiction to the Cayman authorities and Courts at least every 5 years. Again, good for the Island to have a connection with each OPC and good for hotels, business and services providers.

⁷ Comment: This is taken from the Proceeds of Crime Law (2019 Revision), section 140 – perhaps to include releasing to “relevant competent authority or the Royal Cayman Islands Police Service”. In

6. AML/CTF to apply to OPs and Law Firm overseas offices

(a) All AML/CTF laws and regulations that apply to legal practitioners in the Cayman Islands shall apply to OPs and overseas offices.⁸

7. Offence - knowingly deal with a person/entity in breach of legal practitioners law

(a) It shall be an offence to knowingly deal with a person or entity acting in breach of this law.⁹

8. Funds derived from breach of this law shall be proceeds of crime - shall be an offence

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order to get the benefits of the Cayman Islands overseas persons will need to use for instance local corporate service providers for registered office - we need a whistleblower provision to ensure that employees and others can make complaints without fear, should any breach arise.

8 Comment: An overseas practitioner will only be able to get a certificate from a Cayman law firm. Therefore, Cayman law firm will be able to control procedures, etc. It can also be part of the form seeking application for OPC that law firm agrees to apply Cayman AML/CTF laws and regulations.

9 Comment: Basically, Cayman's resources in this lawful registration and/or licensing of structures, persons or entities must seek to register or licence something. They can sometimes do this through corporate services providers. We need to make those corporate services and other third party service providers (almost all of whom should have some lawful connection to the Islands) to be the gatekeepers and to protect our jurisdiction. Therefore, it should be an offence for them to deal with someone they know does not hold an OPC or is not a "law firm". It should stop a third party service providers from taking documents prepared by some attorney or firm, who are not Caymanian attorneys or licensed in the jurisdiction and filing/lodging/registering them.

10 Comment: The Proceeds of Crime Law may need to be updated to specifically include funds derived from a breach of the Legal Practitioners Law (for example, dealing with an attorney or firm who is not licenced and accepting money). By making this an offence, we can include it in all the new AML/CTF laws that have been brought in to capture everyone. Therefore, persons dealing with attorneys will need to do risk assessment to ensure that they are actually attorneys (licensed, the firm has no licence, etc.). By making it part of the AML/CTF it will make it very difficult for those dealing with foreign legal documents or persons to put their head in the sand and claim they did not know as they will be required to do proper risk assessments and it will be easy to verify firms and attorneys. Further, if there is a suspicious transaction they will be obligated to file a suspicious activity report to protect themselves. This will then go to the Financial Reporting Authority, who can have the appropriate authorities investigate and if need be prosecute. Most third party service providers will not be law firms and there will not be any issue of confidentiality with suspicious activity reports.