

Cayman Islands Regulatory Update 开曼群岛监管更新

The Cayman Islands has recently seen the passing of a number of laws to improve the Island's regulatory framework in support of the international financial system's integrity. These laws are intended to maintain the jurisdiction's adherence to international standards and, in particular, better align the jurisdiction with the recommendations of the Financial Action Task Force ("FATF"); the inter-governmental body that sets the standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

This alert touches on some of the recent legal and regulatory developments in the Cayman Islands, which may be of interest to our clients.

The Proceeds of Crime Law (2017 Revision) and The Anti-Money Laundering Regulations, 2017

The *Proceeds of Crime Law (2017 Revision)* (the "POCL") is the primary piece of legislation in the Cayman Islands dealing with anti-money laundering and combatting of terrorist financing ("AML"). The POCL applies to all businesses and individuals and is supported by *The Anti-Money Laundering Regulations, 2017* (the "AML Regulations"), which were gazetted on 20 September 2017, and came into force on 2 October 2017.

Recent amendments to the POCL include, amongst other things, the widening of activities that fall within the definition of 'relevant financial business', to conform with the activities considered to be relevant

开曼群岛近期通过了多项法例，以改善其监管框架，从而增进国际金融体系的完整性。该等法例旨在令该司法管辖区保持遵守国际准则，尤其是与财务特别行动组织（Financial Action Task Force，下称“FATF”）的建议更趋一致。FATF作为政府间组织，就打击洗钱、恐怖主义融资和对国际金融体系完整性的其他相关威胁设定法律、监管及操作措施方面的标准并推动该等措施的有效施行。

本提示简报涉及我们的客户可能感兴趣的开曼群岛近期的若干法律及监管动态。

《犯罪收益法（2017年修订本）》及《2017年反洗钱条例》

《犯罪收益法（2017年修订本）》（The *Proceeds of Crime Law (2017 Revision)*，下称“犯罪收益法”）是开曼群岛针对反洗钱和打击恐怖主义融资（下称“反洗钱”）的主要法例。犯罪收益法适用于所有企业及个人，并得到《2017年反洗钱条例》（*The Anti-Money Laundering Regulations, 2017*，下称“反洗钱条例”）的支持。反洗钱条例于2017年9月20日刊宪，并于2017年10月2日生效。

犯罪收益法的最新修订（其中）包括扩大符合“相关金融业务”之定义的活动范围，从而与根据国际准则被视为相关金融业务的活动一致。除原订明的活动外，“相关金融活动”现亦包括：(i) “代表其他人士另外投资、

financial business in accordance with international standards. In addition to the previously prescribed activities, 'relevant financial business' now includes: (i) "otherwise investing, administering or managing funds or money on behalf of other persons"; and (ii) underwriting and placement of life insurance and other investment related insurance". The definition of 'relevant financial business' has been adopted by the AML Regulations which now infer the application of the same term, as expanded, under the principal law.

The amendments to the AML Regulations bring about significant changes to the Cayman Islands AML regime to keep it closely aligned with the FATF recommendations. The AML Regulations introduce a new risk-based approach to AML in the Cayman Islands, including enhancements for addressing high-risk situations and tougher sanctions for any breach. The practical application of the risk rating methodology for customer relationships will likely be expanded upon in the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (the "Guidance Notes") which shall be updated in due course. The Guidance Notes will be of significant importance when seeking to clarify and interpret the AML Regulations and we will issue a further alert once the Guidance Notes are available.

The Monetary Authority (Amendment) Law, 2016 and The Monetary Authority (Administrative Fines) Regulations, 2017

The *Monetary Authority (Amendment) Law, 2016* (the "Amendment Law") was passed by the Ministry of Financial Services of the Cayman Islands in October 2016. The Amendment Law seeks to address advice given by the European Securities and Markets Authority ("ESMA") in July 2016 relating to the extension of the *European Alternative Investment Fund Managers Directive* ("AIFMD"), marketing passport to non-EU alternative investment fund managers and alternative investment funds established in non-EU third countries that are assessed as equivalent.

The Amendment Law is not yet in force and is pending publication of *The Monetary Authority (Administrative Fines) Regulations, 2017* (the "MA Regulations"), which will set out the rules and guidance regarding the amount of fines and the exercise of power (and application of any discretion), including procedures of imposing fines, appeals, payment and enforcement. A draft of the MA Regulations is currently available in consultation form and we will issue further updates once these regulations come into force.

管理或经营基金或款项”；及 (ii) “承保及配置人寿保险及其他投资相关保”。“相关金融业务”的定义已获反洗钱条例采纳，反洗钱条例现推定主要法律应用经扩展涵义的另一词汇。

反洗钱法例的修订使开曼群岛反洗钱制度发生重大变更，使其紧贴FATF建议。反洗钱法例为开曼群岛反洗钱引入了一种基于风险的新途径，包括改进高风险情况的处理方式和对任何违规行为实施更严厉的制裁。客户关系风险评级方法的实际运用可能会在《开曼群岛防止与侦查洗钱及恐怖主义融资的指引说明》(Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands, 下称“指引说明”)中进行进一步论述，而指引说明会适时更新。指引说明在试图阐明及解释反洗钱法例时尤为重要，我们会在指引说明可供查阅后立即发出进一步的提示简报。

《2016年金融管理局(修正案)法》及《2017年金融管理局(行政罚款)条例》

《2016年金融管理局(修正案)法》(下称“修正法”)由开曼群岛金融服务部(Ministry of Financial Services)于2016年10月通过。修正法旨在处理欧洲证券和市场管理局(European Securities and Markets Authority, 下称“ESMA”)于2016年7月提出的有关延展《欧洲另类投资基金管理人指令》(下称“AIFMD”)的建议，向非欧盟另类投资基金管理人和评估为等效的于非欧盟第三国成立的另类投资基金推销通行权。

修正法尚未生效，尚待《2017年金融管理局(行政罚款)条例》(The Monetary Authority (Administrative Fines) Regulations, 2017, 下称“金融管理局条例”)公布。金融管理局条例将载列关于罚款金额和行使权力(及运用任何酌情权)的规则及指引，包括处以罚款、申诉、付款及执行的程序。金融管理局条例草稿本目前可供查阅，本所会在其生效后立即发出进一步更新。

The Amendment Law will give the Cayman Islands Monetary Authority (“CIMA”) powers that are in line with the powers granted to onshore regulators to impose administrative fines for breaches of regulatory laws and regulations (including the AML Regulations). A breach under the Amendment Law will be categorised as minor, serious or very serious with a sliding scale of fines ranging from approximately US\$6,000 for a minor breach up to US\$120,000 for individuals and up to US\$1,220,000 for entities for a very serious breach. A more detailed alert will follow once the MA Regulations are in final form.

Cayman Islands Monetary Authority, Statement of Guidance – Nature, Accessibility and Retention of Records

CIMA has recently published an updated Statement of Guidance on the Nature, Accessibility and Retention of Records (the “Guidance”) to ensure that persons and entities that are licensed under Cayman Islands regulatory laws maintain records in a manner that supports accessibility and transparency. The Guidance is the result of research conducted by CIMA and feedback received from industry participants and sets out the minimum standard for record keeping that CIMA expects of relevant persons or entities.

The Guidance sets a minimum time period of five years after a transaction date, that relevant entities should maintain records in their “original format”, including electronic copies of paper-based records. Electronic records should be easily accessible and should be provided within one to three business days from the time that they are requested by CIMA, irrespective of the jurisdiction within which the records are stored. Records must also be kept in such a way as to enable CIMA to identify a particular transaction and track the transaction through the accounting systems of the relevant entity.

Records which CIMA expects a relevant entity to keep include, amongst other things: (i) accounting records; (ii) employee and administrative records; (iii) risk management policies; (iv) corporate records; (v) client due diligence; (vi) client communications and complaints; and (vii) annual returns.

For additional information, please contact your usual Conyers Dill & Pearman representative.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

修正法会赋予开曼群岛金融管理局（Cayman Islands Monetary Authority，下称“金融管理局”）的权力将与授予在岸监管机构就违反监管法律及法规（包括反洗钱条例）处以行政罚款的权力一致。违反修正法的行为分为轻微、严重或非常严重，将处以递进罚款，介乎针对轻微违法行为的约6,000美元至针对非常严重违法行为的最高120,000美元（个人）及最高1,220,000美元（公司）。金融管理局条例最终确定后，本所会发出更详细的提示简报。

开曼群岛金融管理局指引声明 – 记录的性质、查阅权限及留存

金融管理局近期公布了有关记录的性质、查阅权限及留存的最新指引声明（下称“指引”），以确保根据开曼群岛监管法例持牌的人士及实体以支持可查阅性及透明度的方式存置记录。指引是综合金融管理局之研究和业界参与者之反馈的结果，其中载有金融管理局期望相关人士或实体保存记录的最低标准。

指引列明，相关实体应在交易日期后至少五年内以“原始格式”（包括纸质记录的电子副本）保存记录。电子记录应易于获取，且应在金融管理局提出要求后一至三个营业日内予以提供，而不论该等记录储存在哪个司法管辖区。记录亦须以金融管理局能识别个别交易并能透过相关实体的会计系统追踪交易的方式储存。

金融管理局期望相关实体保存的记录（其中）包括：(i) 会计记录；(ii) 雇员及行政记录；(iii) 风险管理政策；(iv) 企业记录；(v) 客户尽职调查；(vi) 客户沟通及投诉；及 (vii) 周年申报表。

有关其他资料，请联络阁下于康德明律师事务所的日常联络人。

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅！

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