

NEWSLETTER

Regulatory & Risk Advisory  
Review: Cayman Islands

JAN TO APRIL 2023

CONYERS



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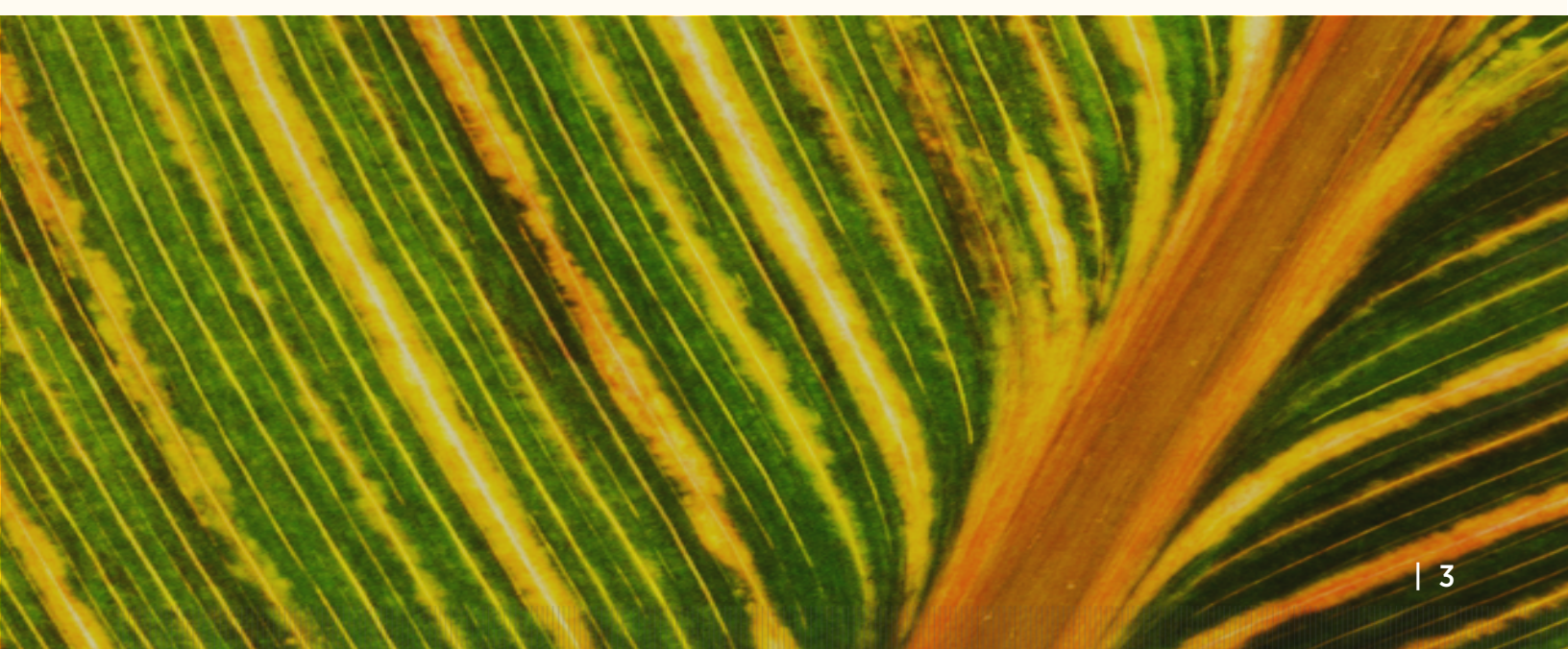
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**We are pleased to welcome you to Conyers' Cayman Islands Regulatory & Risk Advisory Review, keeping you apprised of the latest regulatory news and developments.**

The past few months have been a particularly active time for Conyers' regulatory team, most notably relating to sanctions advice, duties of confidentiality, breach notices and investigations concerning data protection, queries regarding beneficial ownership register requirements and upcoming changes to same and economic substance reporting and compliance notice requirements. As we discuss in this newsletter, there has been a wave of new rules and statements of guidance from the Cayman Islands Monetary Authority now in effect (and coming into effect) covering areas such as outsourcing, record retention, cybersecurity, internal controls and corporate governance.

Assisting our clients to ensure ongoing compliance and safeguarding against enforcement actions (to include potential administrative fines) has never been more of a priority.



The Conyers' regulatory team is pleased to provide our valued clients with a round-up of recent regulatory matters of interest in the Cayman Islands. Should you have any queries or require further information, please contact a member of the regulatory team or your usual Conyers contact.

## 1. CIMA RULES AND STATEMENTS OF GUIDANCE

The Cayman Islands Monetary Authority ("CIMA") recently issued a new Statement of Guidance on Corporate Governance – Mutual Funds and Private Funds (the "Fund SOG") which serves to (i) update the current guidance applicable to funds registered under the Mutual Funds Act; (ii) expand the scope of the guidance to cover funds registered under the Private Funds Act; and (iii) set out CIMA's minimum expectations regarding the corporate governance frameworks of regulated funds generally.

The Fund SOG took effect on 14 April 2023 and whilst not intended to be prescriptive or exhaustive, does provide CIMA's views on what it considers to be sound and prudent fund governance, the framework for which should be proportionate to the size, complexity, structure, nature of business and risk profile of the fund.

For further details in respect of the Fund SOG please see our recent [Alert](#).

Relevant to both funds and other regulated entities, CIMA has also issued a new Rule on Corporate Governance for Regulated Entities and a Rule and Statement of Guidance on Internal Controls for Regulated Entities which will each come into effect within 6 months of the publication date of 14 April 2023 and in respect of which Conyers will provide separate updates.

Other Rules and Statements of Guidance that have been recently updated by CIMA include:

- Statement of Guidance – Nature, Accessibility and Retention of Records;
- Rule and Statement of Guidance on Cybersecurity for Regulated Entities; and
- Statement of Guidance – Outsourcing Regulated Entities.



## 2. INDUSTRY CONSULTATIONS

### 2.1 *Anti-Money Laundering Regulations (2023 Revision) (“AML Regulations”)*

In early 2023, the Anti-Money Laundering Unit of the Cayman Islands Government sought comments and feedback on proposed amendments to the AML Regulations which aim to ensure consistency and compliance with international standards promulgated by the Financial Action Task Force. Proposed amendments address, amongst other things:

- (i) assessment of proliferation financing risks;
- (ii) a revision to provide for a threshold amount of ten thousand Cayman Islands dollars to trigger client due diligence requirements in the context of one-off transactions;
- (iii) updates to the provisions relevant to designated non-financial businesses and professions in terms of monitoring compliance, provision of information, ability for supervisors to impose fines for breaches; updated registration requirements and the information to be included in the register; and
- (iv) ensuring that penalties and fines may be imposed on corporations, partnerships and unincorporated associations and certain of their officers.

### 2.2 *The Beneficial Ownership Transparency Bill, 2023 (the “Bill”)*

The Bill consolidates the existing beneficial ownership legislation applicable to companies, limited liability companies and limited liability partnerships into a single act, and notably will also bring into scope limited partnerships and exempted limited partnerships.

As currently drafted, the Bill removes most of the exemptions from the requirement to maintain a beneficial ownership register under the current regime by replacing the exemptions with certain “alternative routes to compliance”. This will apply to legal persons that are (i) listed on the Cayman Islands Stock Exchange or an approved stock exchange (or their subsidiaries); (ii) funds registered under the Private Funds Act or Mutual Funds Act; (iii) licensed under a Cayman regulatory law (as defined); or (iv) otherwise exempted by Cabinet. These entities will no longer be required to file a written confirmation of exemption and must instead submit the contact name of a person in the Cayman Islands who will be responsible for providing a competent authority with the requisite beneficial ownership information upon request.

Other notable provisions include:

- changes to the definition of “beneficial owner”;
- confirmation that trustees of a trust may be beneficial owners;
- registrable beneficial owner details will no longer need to be kept on the register for five years but instead should be kept by the corporate services provider;
- the inclusion of access provisions in respect of certain financial institutions and designated non-financial businesses or professions;
- the public access provisions may only commence pursuant to a future resolution of the Parliament; and
- enhanced responsibilities of corporate service providers to review and verify the identity of beneficial owners through reliable information sources.

The obligations of entities under the existing legislation will remain in force until the commencement of the Bill which allows for the commencement of different provisions at different times.

### **3. CIMA POLICIES AND NOTICES**

- CIMA has released its Approved Stock Exchanges Regulatory Policy which sets out, amongst other things, its criteria for approving stock exchanges and the bases upon which approval of a particular stock exchange may be refused.
- On 22 March, 2023, CIMA published a notice announcing that it would cease collecting annual registration fees in respect of segregated portfolios of private fund segregated portfolio companies. Any fees paid up until the date of the notice are to be refunded.

### **4. FINANCIAL ACTION TASK FORCE (“FATF”) PROGRESS REPORT**

The Cayman Islands continues to strive towards satisfying the final recommendation for its removal from the list of countries subject to increased anti-money laundering monitoring. Earlier this year, the FATF expressed concerns that the Cayman Islands is still failing to address strategic deficiencies by demonstrating that all types of money laundering cases are being prosecuted in line with the jurisdiction’s risk profile. The Cayman Islands will continue to provide progress reports to the FATF Joint Group for a decision to be made on Cayman’s status during the FATF Plenary in June. If Cayman is to be removed from the list, it would likely occur at the following Plenary in October 2023.



## 5. RUSSIA - SANCTIONS AND GENERAL LICENCES

The Cayman Islands is subject to the United Kingdom's The Russia (Sanctions) (EU Exit) Regulations 2019 (the "Regulations"). These Regulations prevent people from dealing in funds or economic resources owned or controlled by, or making funds or economic resources available to, persons or entities listed under related sanctions orders. It is possible to apply for general licences to be issued in order to undertake activities which would otherwise be prohibited. The following general licences have been issued:

- GL/2022/0001 allows a relevant investment fund or fund manager to redeem, withdraw or otherwise deal with an investment interest and make payments for basic needs, routine holding and maintenance and legal fees from frozen accounts. Originally set to expire on 4 April 2023, it was extended to 5 October 2023.
- GL/2022/0002 implements the Oil Price Cap to deprive Russia of excess oil revenues by constraining its ability to sell at global market prices while still enabling Russian oil to flow to countries that need it.
- GL/2023/001 permits activities necessary to terminate arrangements with designated persons in respect of trust services.
- GL/2023/002 allows, subject to conditions, any person or relevant institution to receive payments, make payments (directly or indirectly), process payments from or in respect of designated persons for legal professional fees and expenses associated with the provision of legal services.



## **6. JUDICIAL REVIEW – VALIDITY OF CIMA FINDINGS AND POWERS UNDER THE AML REGULATIONS**

In March 2023, the Grand Court of the Cayman Islands delivered a judgment in respect of a judicial review of CIMA’s inspections (and resulting report and remediation requirements) of corporate services providers Maples Corporate Services Limited and Maples Financial Services.

It was found that whilst CIMA has statutory authority to use the inspection process as a means of developing and sustaining effective compliance systems and to make recommendations for remedial steps in relation to identified shortcomings, in this particular case certain of CIMA’s requirements for remediation were disproportionate and unreasonable.

The Judge found in favour of the corporate services providers on most grounds, noting that the scheme of the regulations is to create general obligations, expressed with varying degrees of specificity, leaving scope for obligations to be flexibly measured applying the overarching risk-based approach on a case-by-case basis. Whilst persons carrying on relevant financial business must understand and obtain information on the purpose and intended nature of their business relationships, this does not necessarily include a requirement to obtain documentary evidence to substantiate the information obtained in each and every case.

The Judge also concluded that there is “very arguably” no general obligation to analyse all client documents to identify authorised signatories; this would only be required where the financial services provider was engaged in some way with the authorised signatory. Ultimately, the anti-money laundering framework is based on financial services providers self-regulating with enforcement action to be taken by CIMA as a last resort.



## 7. LEGISLATIVE BILLS

A range of amendment bills were gazetted in March 2023 to bring partnerships, limited liability partnerships, exempted limited partnerships, partners, unincorporated associations and persons concerned in the management or control of the same into scope for various offences under the relevant regulatory laws:

- Companies Management (Amendment) Bill, 2023
- Directors Registration and Licensing (Amendment) Bill, 2023
- Insurance (Amendment) Bill, 2023
- Monetary Authority (Amendment) Bill, 2023
- Securities Investment Business (Amendment) Bill, 2023
- Virtual Asset (Service Providers) (Amendment) Bill, 2023

## 8. LEGISLATIVE REVISIONS AND CONSOLIDATIONS

- Anti-Money Laundering Regulations (2023 Revision)
- Beneficial Ownership (Limited Liability Companies) Regulations (2023 Revision)
- Companies Act (2023 Revision)
- Limited Liability Companies Act (2023 Revision)
- Limited Liability Partnership Act (2023 Revision)
- Special Economic Zones Act (2023 Revision)
- Companies Winding-Up Rules (2023 Consolidation)
- Insolvency Practitioners Regulations (2023 Consolidation)

## 9. KEY DATES Q2

### 30 June 2023:

Audited financial statements and fund annual returns due for all CIMA registered funds whose financial year end was 31 December.

## Key Contacts

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Please contact Róisín Liddy-Murphy, or one of your usual Conyers contacts should you wish to know more about any of the topics covered in the newsletter.

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