

NEWSLETTER

Regulatory & Risk Advisory
Review: Cayman Islands

AUGUST TO OCTOBER 2023

CONYERS

In This Issue

<u>FATF REMOVES CAYMAN ISLANDS FROM GREY LIST</u>	4
<u>CHANGE TO THE EUROPEAN UNION (“EU”) LIST OF NON-COMPLIANT TAX JURISDICTIONS</u>	4
<u>THE PROCEEDS OF CRIME (AMENDMENT)</u>	5
<u>BENEFICIAL OWNERSHIP LEGISLATION</u>	5
<u>CIMA RULES, STATEMENTS OF GUIDANCE AND GENERAL INDUSTRY NOTICES</u>	6
<u>AML GUIDANCE NOTES - E-KYC AMENDMENTS</u>	7
<u>GENERAL LICENCES</u>	7
<u>IMPORTANT DATES</u>	7
<u>CONYERS INSIGHTS</u>	8
<u>KEY CONTACTS</u>	9

Welcome to the third instalment of our Cayman Islands Regulatory & Risk Advisory Review. As we cover in this issue, there have been a number of exciting developments, including the welcome news of the Financial Action Task Force (FATF) removal of the Cayman Islands from its list of jurisdictions under increased monitoring otherwise known as the FATF grey list, the Cayman Islands Monetary Authority new Rule on Corporate Governance, Rule and Statement of Guidance on Internal Controls for Regulated Entities, proposed changes to the beneficial ownership regime and CIMA's guidance on e-kyc along with other legislative updates.

We have also included some recent articles from our wider Conyers team which provide further insight into industry trends and market news.



1. FATF REMOVES CAYMAN ISLANDS FROM GREY LIST

The FATF announced its decision to remove the Cayman Islands from its list of jurisdictions subject to increased monitoring (the “Grey List”) on 27 October 2023. The delisting process involved an onsite FATF visit and subsequent report which was presented at the FATF Plenary in Paris. The FATF announcement confirmed that the Cayman Islands maintains a robust and effective anti-money laundering/counter terrorist financing (AML/CFT) monitoring regime. Following the decision, the Cayman Islands is eligible to be removed from the European Union’s enhanced AML/CFT due diligence list. [Read more](#)

2. CHANGE TO THE EUROPEAN UNION (“EU”) LIST OF NON-COMPLIANT TAX JURISDICTIONS

The EU added Antigua and Barbuda, Belize and the Seychelles to its list of countries whose tax systems are not deemed to be compliant with international standards in October. The British Virgin Islands, Costa Rica and the Marshall Islands were removed from the list on the basis that they had, respectively, made changes to information exchange systems and foreign source of income regimes and achieved progress in enforcing economic substance rules.

3. LEGISLATION UPDATE

3.1. Proceeds of Crime (Amendment) Act 2023

The Proceeds of Crime (Amendment) Act 2023 (the “POCAA”) was gazetted on 6 October 2023 but is not yet in force. The proposed amendments concern intelligence gathering and investigations, conforming to international best practices, clarifying the evidential basis for criminal property obtained through unlawful conduct and supervisory authorities’ liability in executing their duties. Of particular note, the proposed amendments to the POCAA also remove the defence against money laundering where a suspicious activity report is filed or intended to be filed. The POCAA provides for regulations to be made to establish a framework under which persons who file suspicious activity reports may seek or obtain a defence to specified offences.

3.2 Beneficial Ownership Legislation

3.1. It is anticipated that the Beneficial Ownership Transparency Bill 2023 (the “Bill”) gazetted on 30 August 2023 will be presented to Parliament in the fourth quarter of 2023. The Bill consolidates the beneficial ownership provisions of the Companies Act, the Limited Liability Companies Act and the Limited Liability Partnership Act and brings limited partnerships and exempted limited partnerships into scope of the reporting requirements. Amendments have been made to the definition of beneficial owner and the information required to be reported to the Competent Authority.

Beneficial owners will be required to declare their nationality and the way in which their control is exercised, whether by voting rights, shareholding or ultimate effective control. The exemptions in the current legislation will be removed, and certain “alternative routes to compliance” will be added. Entities “licensed under a regulatory law” will be able to utilise an alternative route to compliance, however, entities that are part of a fund structure but not registered with the Cayman Islands Monetary Authority (CIMA) , and those that previously relied upon the managed, arranged, administered, operated or promoted by an ‘approved person’ exemption will not be able to rely on an alternative route to compliance. Corporate service providers will also need to comply with enhanced responsibilities in reviewing and identifying beneficial owners once the legislation is in effect. Accompanying regulations and guidelines are expected to be issued in due course. The Bill provides for a phased introduction.

4. CIMA RULES, STATEMENTS OF GUIDANCE AND GENERAL INDUSTRY NOTICES

4.1. Rule on Corporate Governance for Regulated Entities and Rule and Statement of Guidance on Internal Controls for Regulated Entities Now In Effect

The Rule on Corporate Governance and Rule and Statement of Guidance on Internal Controls for all regulated entities issued by CIMA on 14 April 2023 came into effect on 14 October 2023. The Rule on Corporate Governance applies to governing bodies of all regulated entities and requires them to adopt corporate governance frameworks commensurate with the size, complexity, structure, nature of business and risk profile of their operations. In particular, regulated entities must ensure that their corporate governance frameworks address risk management, outsourcing and internal controls in accordance with specific minimum requirements outlined in the Rule. Governing bodies of regulated entities must also comply with expanded responsibilities concerning governance, oversight and internal controls in accordance with the Rule and Statement of Guidance on Internal Controls for Regulated Entities. These new Rules and Statements of Guidance supersede the former Rules and Statements of Guidance relating to corporate governance and internal controls, which have been repealed with effect from 14 October 2023.

4.2. Rule and Statement of Guidance – Nature, Accessibility and Retention of Records – Company Managers

New licensees under the Companies Management Act, Banks and Trusts Companies Act, Mutual Funds Act and Insurance Act which are conducting the business of company management will be in scope of a new Rule and Statement of Guidance issued on 31 August 2023. For existing licensees conducting the business of company management, the new Rule and Statement of Guidance will come into effect on 1 April 2024. The Rule and Statement of Guidance establishes minimum requirements regarding the maintenance of records to promote accessibility, retention and appropriate security.

4.3. General Industry Notice – Regulated Fund Filings

Due to a systemic issue in the filing of audited financial statements and FAR forms for Funds with a financial year end (“FYE”) of 31 December 2022, CIMA announced in a general industry notice on 1 September 2023 that no penalties will be levied for late filings. Filings were facilitated through CIMA’s REEFS Portal up until 30 September 2023. Funds with FYEs subsequent to 31 December 2022 are still obligated to file within 6 months of the FYE or submit an extension request with the requisite fee.

5. AML GUIDANCE NOTES – E-KYC AMENDMENTS

Amendments to the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing (“AML Guidance Notes”) concerning electronic ‘Know Your Customer’ (“e-KYC”) practices, remote client due diligence (“CDD”) and ongoing monitoring were published on 30 August 2023. The amendments support recommendations issued by the FATF concerning digital identification and clarify that technological means for remote CDD and e-KYC is permitted beyond the context of circumstances surrounding CIMA’s related e-KYC advisory issued during the Covid-19 pandemic. The AML Guidance Notes also state that financial service providers must conduct verification through a risk-based case by case approach, dependent upon the particular risk factors and scenarios and provide guidance concerning customer identification and verification methods, the risk assessment of technology solutions, video conferencing, non face to face relationships and required policies and procedures.

6. GENERAL LICENCES

6.1. General Licence 2022/0001 (“GL 2022/0001”) was originally issued on 4 October 2022 under the Russia (Sanctions) (EU Exit) Regulations 2019 (as extended to the Cayman Islands) to allow 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. After previously having been amended to extend to 5 October 2023, GL 2022/0001 was further amended on 6 October 2023 to extend its application to 6 October 2024.

7. IMPORTANT DATES

31 December 2023: Registered mutual and private funds wishing to deregister with CIMA must ensure the fund is in good standing with CIMA (up to date with payments of fees, audits and any other required filings) and file deregistration documents with CIMA by this date to avoid registration fees for 2024.

7. CONYERS INSIGHTS

The following articles and alerts may be of general interest and can be found at the links below on the Conyers website:

[FATF Removes Cayman Islands from Grey List](#)

[An Overview of Cayman Islands Private Trust Companies](#)

[Cayman Islands' Corporate Governance Rule and Internal Controls Guidance and Rule](#)

[Cayman Islands Shareholder Remedies: Stays in Favour of Arbitration](#)

[New Rules on Corporate Governance and Internal Controls Coming into Effect on 14 October 2023](#)

[Orienteering Change: Navigating Restructuring Under the New Cayman Islands Regime](#)

[Revamped Cayman Islands Restructuring Regime Takes Shape](#)



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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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