

NEWSLETTER

Regulatory & Risk Advisory Outlook

CAYMAN ISLANDS | 2024

CONYERS

In This Issue

<u>UPCOMING FEE INCREASES EFFECTIVE 1 JANUARY 2024</u>	3
<u>CIMA RULES AND STATEMENTS OF GUIDANCE, REGULATORY POLICIES, GENERAL INDUSTRY NOTICES AND REPORTS</u>	4
<u>ANTI-MONEY LAUNDERING</u>	5
<u>REMOVAL FROM THE FINANCIAL ACTION TASK FORCE GREY LIST</u>	5
<u>DELISTING FROM EU AND UK ANTI-MONEY LAUNDERING LISTS</u>	5
<u>LEGISLATION REVIEW AND UPDATES</u>	6
<u>SANCTIONS & GENERAL LICENCES</u>	8
<u>KEY CONTACTS</u>	10

2023 was an active year for the Cayman Islands regulatory industry. While we have endeavoured to keep you updated throughout the year with our Regulatory & Risk Advisory Reviews, our team has highlighted below the key changes and news that may affect Cayman entities in the coming year, including the removal of the Cayman Islands from the FATF Grey List. As always, if you have any questions, please reach out to a member of the Regulatory & Risk Advisory team or your usual Conyers contact.

1. UPCOMING FEE INCREASES EFFECTIVE 1 JANUARY 2024

The Ministry of Financial Services & Commerce has announced increases to company annual fees and various filing fees effective from 1 January 2024. The increased fees were gazetted on 30 November 2023 through various regulations applicable to exempted limited partnerships, limited liability partnerships, exempted companies, non-resident companies, foreign companies, limited liability companies and segregated portfolio company cells.

2. CIMA RULES AND STATEMENTS OF GUIDANCE, REGULATORY POLICIES, GENERAL INDUSTRY NOTICES, REPORTS AND SUPERVISORY CIRCULARS

The Cayman Islands Monetary Authority (CIMA) released the following list of rules and statements of guidance, regulatory policies, general industry notices, reports and supervisory circulars over the course of 2023. CIMA issued expanded corporate governance and internal control guidance for regulated entities, including mutual and private funds, as well as guidance addressing more specific issues including cybersecurity, outsourcing, document retention and anti-money laundering/counter terrorist financing (AML/CFT) remediation plans and monitoring. CIMA also clarified its approach to consolidated supervision of regulated entities in a Regulatory Policy issued in November 2023. The Insurance and Reinsurance industries were given guidance with regards to Reinsurance arrangements, licencing for Class D Insurers and stress testing.

- Updated Statement of Guidance – Nature, Accessibility and Retention of Records (effective April 2023)
- Approved Stock Exchanges Regulatory Policy (April 2023)
- Updated Statement of Guidance – Outsourcing Regulated Entities (April 2023)
- Updated Statement of Guidance on Corporate Governance for Mutual and Private Funds (effective 14 April 2023)
- General Industry Notice: Update to Financial Sanctions Regime (9 May 2023)
- Amended Rule and Statement of Guidance on Cybersecurity for Regulated Entities (effective 14 April 2023)
- Rule and Regulatory Policy on Domestic Systemically Important Deposit Taking Institutions (not in effect; effective on 27 May 2024)
- Revised Rule and Statement of Guidance on Reinsurance Arrangements (not in effect; effective on 27 May 2024)
- Thematic Cybersecurity Review Report 2023 (June 2023)
- Regulatory Policy: Licencing for Class D Insurers (effective 7 June 2023)
- Supervisory Information Circular: Stress Testing for Insurers (28 June 2023)
- Rule and Statement of Guidance – Nature, Accessibility and Retention of Records for Licensees Conducting the Business of Company Management (effective for new licensees from 31 August 2023; effective for existing licensees from 1 April 2024)
- Policy & Development Memorandum (October 2023)
- Rule on Corporate Governance for Regulated Entities (effective 14 October 2023)
- Rule and Statement of Guidance on Internal Controls for Regulated Entities (effective 14 October 2023)
- Rule on Corporate Governance for Regulated Entities and Rule and Statement of Guidance on Internal Controls for Regulated Entities (effective 14 October 2023)
- Regulatory Policy – Consolidated Supervision (21 October 2023)
- Supervisory Information Circular - AML/CFT Remediation (29 December 2023)

3. ANTI-MONEY LAUNDERING (AML)

Amendments to the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing (the “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. CIMA also released a supervisory information circular providing background to the amendments and highlighting the key changes on 9 November 2023. The amendments support recommendations issued by the Financial Action Task Force (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 Covid-19. 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.

Proposed amendments to the AML Regulations are also under consideration to address Designated Non-Financial Businesses and Professions’ duties, assessing proliferation financing risk, administrative fines, the value of transactions for the purposes of identification and record-keeping procedures and batch file transfers of virtual assets.

4. REMOVAL FROM THE FINANCIAL ACTION TASK FORCE 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. Following the decision, the Cayman Islands is eligible to be removed from the European Union’s enhanced AML/CFT due diligence list.

5. DELISTING FROM EU AND UK ANTI-MONEY LAUNDERING LISTS

The UK Government removed the Cayman Islands from its list of high-risk countries for AML purposes on 5 December following the removal of the Cayman Islands from the Grey List. Furthermore, the EU Commission published delegated regulation C (2023) 8595 (the “EU Regulation”) in mid-December which amends its previous delegated regulation (EU) 2016/1675. The EU Regulation recognises that the Cayman Islands has remedied strategic deficiencies in its AML framework and does not pose a significant threat to the EU financial system. Once the EU Regulation is in force, the Cayman Islands expect to be removed from the EU AML List.

6. LEGISLATION REVIEW AND UPDATES

6.1. Legislative Consolidations

New revisions were released during 2023 for the following Acts and Regulations:

- Anti-Money Laundering Regulations (2023 Revision) (“AML Regulations”)
- Beneficial Ownership (Limited Liability Companies) Regulations (2023 Revision)
- Companies Act (2023 Revision)
- Companies Winding Up Rules (2023 Revision)
- Limited Liability Companies Act (2023 Revision)
- Limited Liability Partnership Act (2023 Revision)
- Special Economic Zones Act (2023 Revision)

6.2. Cayman Islands Monetary Authority – Exercise and Scope of Powers

The list of Acts below were gazetted on 26 May 2023 to bring partnerships, limited liability partnerships and exempted limited partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations into scope for various offences and enhance CIMA’s power to prescribe sanctions under certain regulatory laws:

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

The validity of CIMA’s powers and findings under the AML Regulations was also addressed by the Honourable Mr Justice Kawaley in Judicial Review (G0020/2021) in respect of a judicial review arising out of CIMA inspections of Maples Corporate Services Limited and Maples Financial Services (the “Plaintiffs”) and CIMA’s resulting report and requirements (the “Requirements”) to the Plaintiffs to remedy alleged breaches of the AML Regulations. The Plaintiffs submitted that the Requirements were generally unnecessary, disproportionate and interfered with fundamental rights contained in certain sections of the Bill of Rights and asserted that CIMA had no power to impose the Requirements under Cayman law. In the judgment handed down on 30 March 2023, the Court identified CIMA’s primary functions of the inspection process as recommending remedial steps in relation to identified shortcomings. However, CIMA was held to have clear statutory authority to make the Requirements and the Court endorsed CIMA’s inspection process outlined in its Regulatory Handbook as a means of developing and sustaining effective compliance systems on an incremental basis, using enforcement as a last resort.

6.3. Beneficial Ownership

Following industry consultation from March to April 2023, the Beneficial Ownership Transparency Act 2023 (the “Act”) was gazetted on 15 December 2023 but is not yet in force. The Act 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. 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 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. The Act also allows for Cabinet to make regulations for constitutionally permissible public access to beneficial ownership registers. However, Government is not implementing this element of the Act on the back of the European Court of Justice decision in November 2022 that held public access to beneficial ownership information in Luxembourg and other European Union States to disproportionately interfere with data protection and privacy under the European Charter of Fundamental Rights.

Associated changes have been drafted in the list of Acts below. The Ministry of Financial Services has announced that the beneficial ownership framework will be implemented under the Act in stages throughout the course of 2024. Government has advised that accompanying regulations and guidelines will be issued in due course.

- Banks and Trust Companies (Amendment) Act 2023
- Companies (Amendment) Act 2023
- Companies Management (Amendment) (No. 2) Act 2023
- Foundation Companies (Amendment) Act 2023
- Insurance (Amendment) (No. 2) Act 2023
- Limited Liability Companies (Amendment) Act 2023
- Limited Liability Partnership (Amendment) Act 2023
- Mutual Funds (Amendment) Act 2023
- Virtual Asset Service Providers (Amendment) (No. 2) Act 2023

6.4. 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.

6.5. Updated List of Approved Stock Exchanges

The Companies (Amendment of Schedule) Order 2023 updated the list of Approved Stock Exchanges.

6.6 Changes to REEFS Investment Strategy Selections

CIMA removed certain general Investment Strategy categories from the REEFS portal and added more specific categories in order to enhance monitoring and accuracy of investment strategies reported by regulated mutual and private funds with respect to fund applications and FAR filings. Of particular note, CIMA advised that where a fund has Environmental, Social and Governance (ESG) as its key focus, it should select ESG as its primary investment strategy. ESG should be chosen as a fund's secondary investment strategy where funds have ESG as material substance, but not as a core consideration. The new Investment Strategy categories were effective from 15 November 2023.

7. SANCTIONS & GENERAL LICENCES

7.1. Proceeds of Crime (Amendment) Act 2023

The United Kingdom Foreign Secretary has continued to develop and extend sanctions as a result of continuing hostilities between Russia and Ukraine which extend to the Cayman Islands as a British Overseas Territory by virtue of the Russia (Sanctions) (Overseas Territories) (Amendment) (No. 2) Order 2023 S.I. 2023 No. 846. Sanctions include punitive actions in the form of asset freezes, travel bans, transport sanctions and trust services sanctions against individuals and companies who knowingly assist Russian oligarchs to hide their assets in complex financial networks and prohibitions on the provision of legal advisory services regarding certain activities prohibited in the United Kingdom. Certain exceptions include a carve out in relation to diplomatic work, compliance and regulatory obligations, auditing services, expert evidence in connection with legal proceedings and obligations under contracts concluded before 30 June 2023 (provided that services were carried out before 29 September 2023). Sanctions have also been modified in relation to offences for the export of goods to non-government controlled Ukrainian territory and the import of relevant processed iron or steel products and revenue generating goods from Russia.

- Russia (Sanctions) (EU Exit) (Amendment) Regulations 2023 (S.I. 2023/440)
- Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/665)
- Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 (S.I. 2023/713)
- Russia (Sanctions) (Overseas Territories) (Amendment) Order and Notice 2023
- Russia (Sanctions) (Overseas Territories) (Amendment No. 2) Order and Notice 2023
- Russia (Sanctions) (Overseas Territories) (Amendment No. 3) Order and Notice 2023
- Russia (Sanctions) (Overseas Territories) (Amendment No. 4) Order and Notice 2023

7.2 GENERAL LICENCES

The Governor of the Cayman Islands has issued three general licences over the last year under regulation 64 of the Russia (Sanctions) (EU Exit) Regulations 2019. General Licence (GL) 2023/0001 permits any activity necessary to terminate an arrangement between a trustee and a designated person for the provision of trust services, subject to certain conditions. The second general licence allows any person or relevant institution, upon certain conditions being fulfilled, to receive and make payments to, on behalf of or for the benefit of, a designated person as well as carry out any reasonably necessary acts associated with such payments. GL 2022/0001, originally issued on 4 October 2022, has also been further amended to extend its application to 6 October 2024 and 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. On 15 November 2023, the Governor issued GL/2023/0003 in relation to the Russian sanctions currently in effect which allows any Person or Relevant Institution (provided that one of the sets of conditions in one of parts A or B of the GL are complied with in full) to receive payments from or on behalf of a Designated Person (DP), make payments (directly or indirectly) for or on behalf of, or for the benefit of, a DP, process payments which relate to a DP and to carry out any other act which is reasonably necessary to give effect to this. The GL also applies to payments for legal services provided certain conditions are satisfied. The GL expires on 15 May 2024.

- GL 2022/0001
- GL 2023/0001
- GL 2023/0002
- GL 2023/0003
- GL INT 2023/3024200

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Please contact a member of the Regulatory & Risk Advisory team or one of your usual Conyers contacts should you wish to know more about any of the topics covered in this newsletter.

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