

NEWSLETTER

Regulatory & Risk Advisory
Review: Cayman Islands

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CONYERS

In This Issue

<u>CAYMAN ISLANDS LEGISLATION UPDATE</u>	4
<u>CIMA RULES, STATEMENTS OF GUIDANCE AND GENERAL INDUSTRY NOTICES</u>	7
<u>SANCTIONS</u>	8
<u>CRS REPORTABLE JURISDICTIONS</u>	9
<u>INTERNATIONAL: FINANCIAL ACTION TASK FORCE UPDATES</u>	9
<u>CONYERS WEBSITE ARTICLES & ALERTS</u>	13
<u>KEY CONTACTS</u>	14

Welcome to the second instalment of 2024 of the Regulatory & Risk Advisory Review. In this edition we cover several Cayman Islands regulatory updates including updates to the Beneficial Ownership Transparency Act, the Proceeds of Crime (Amendment) Act and the Virtual Asset Service Providers Act. We also have updates from CIMA and the FATF, as well as the latest articles and news from the wider Conyers team.

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. CAYMAN ISLANDS LEGISLATION UPDATE

1.1. Beneficial Ownership Transparency Act, 2023 (the “BOT Act”)

The Ministry of Financial Services and Commerce provided an update on 29 May 2024 explaining that the Ministry is continuing to progress the legislative and systems changes required to implement the BOT Act, and that commencement is expected in July 2024. The update explained that, until informed otherwise, industry members should continue to file beneficial ownership information using the existing CSV file pursuant to the current beneficial ownership regime. The update explained that industry members will be updated when the filing of beneficial ownership information is to be suspended, and again when to resume filing using the new CSV file.

1.2. Proceeds of Crime (Amendment) Act (the “POCAA”)

Certain provisions of the POCAA came into force 31 January 2024. The POCAA aims to reform intelligence gathering and investigations, bring the jurisdiction into alignment with international best practice, clarify the evidential basis of criminal property and protect self-regulatory bodies from liability in executing their duties. Sections 11, 12 and 13 concerning the concealment of, arrangements in relation to and the acquisition, use and possession of property were scheduled to come into force on 30 April 2024 but will now come into force 1 January 2025.

Sections 11, 12 and 13 retain the statutory defence against money laundering where a suspicious activity report (SAR) is filed or intended to be filed provided that disclosure is made to the Financial Reporting Authority (FRA) and where consent of the FRA has been provided to proceed with the action giving rise to the SAR. Regulations are to be made to establish a framework under which persons who file SARs may seek or obtain a defence to specified offences under the new consent regime.

1.3. Anti-Money Laundering Regulations

The Anti-Money Laundering (Amendment) Regulations, 2024 came into force 19 April 2024, significantly updating and strengthening the Anti-Money Laundering Regulations (the “AML Regulations”). The amendments expanded compliance requirements to include counter-terrorist and proliferation financing measures and oversight of virtual assets has been strengthened.

Designated non-financial businesses and professions which are subject to the AML Regulations are required to provide additional information on registration with their relevant supervisory authority, including the name and date of appointment of their AML Officers and information identifying their ownership and control structure, including information on their beneficial owners and connected persons. They now also have a duty to notify their designated supervisory authority of any change in their risk assessment.

The power to impose administrative fines was clarified; a supervisory authority has the ability to impose administrative fines on directors, managers, secretaries, partners or other similar officers of designated non-financial businesses or professions which contravene the AML Regulations.

The provisions relating to assessment of risk have been amended. The provisions impose a duty on persons carrying out relevant financial business to take steps to assess and understand its money laundering risks, terrorist financing risks and proliferation financing risks, document and keep up to date the risk assessment as well as maintain appropriate mechanisms to provide information to regulatory authorities. Policies, controls and procedures must be consistent with national requirements and guidance from regulators. The need for enhanced due diligence has been expanded to include specific requirements for sanctions screening with respect to higher proliferation financing risks.

1.4. Virtual Asset Service Providers Act

Amendments to the Virtual Asset (Service Providers) Act 2020 (the “Act”) were put forward for public consultation by the Ministry for Financial Services and Commerce of the Cayman Islands in April 2024. The principal purpose of the proposed changes is to prepare the Act for the commencement of the licensing regime for virtual asset trading platform operators and virtual asset custodians. The definition of operator of a virtual asset trading platform was revised in the proposal to give greater clarity, especially in the case of innovative trading platforms which may or may not have a clearly identifiable group managing the platform, such as a Decentralised Autonomous Organisation. A definition for “Convertible Virtual Asset”, previously omitted, was also added in the proposal.

The proposed changes require a minimum of two directors for a virtual asset service provider. A provision is also added which states that approval for a new director or senior officer lapses or will be revoked by CIMA under specific circumstances, bringing the Act in line with existing regulatory laws.

The fee structure was simplified by removing the fee-assessment requirement, thus giving greater clarity on the fees payable by any new applicant. New licensing fees were also included in a proposed amendment to the Virtual Asset (Service Providers) Regulations.

While the Cayman Islands has received a positive rating for its application of global Anti-Money-Laundering and Countering the Financing of Terrorism standards by the Caribbean Financial Action Task Force, the proposed amendments further strengthen the regulator’s ability to enforce requirements.

1.5. Perpetuities Act

The Ministry of Financial Services invited industry feedback on the draft amendment to the Perpetuities Act (1999 Revision) (the “Act”). The Act establishes a statutory perpetuity period of 150 years, which can be neither extended nor shortened, for all dispositions to which it applies. The Ministry notes that a number of competing jurisdictions (e.g. Bahamas, Bermuda, Guernsey, Hong Kong, Jersey) have revised or removed the rule against perpetuities.

Feedback to the Ministry recommended that this legislation be revised to dis-apply the rule against perpetuities (the “Rule”) to future trusts, and to existing trusts via application to the courts. The dis-application of the Rule is intended to preserve Cayman’s competitiveness as a jurisdiction of choice for trust services.

A first draft of the proposed legislation was sent for consultation in January 2024 and revisions made after receiving feedback. The consultation period for the Ministry’s revised proposed approach to the dis-application of the Rule ended 21 May 2024.

1.6. Insolvency Practitioners (Amendment) Regulations, 2024

These amendment regulations prescribe new minimum and maximum rates of remuneration for official liquidators that took effect 1 June 2024.

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

2.1. New Rule and Statement of Guidance - Market Conduct for Trust and Corporate Services Providers and Company Managers

The Rule and Statement of Guidance, which apply to holders of a Trust Licence, Restricted Trust Licence and Nominee Trust Licence issued under the Banks and Trust Companies Act and holders of a Companies Management Licence and Corporate Services Licence issued under the Companies Management Act, establish minimum requirements and guidance for trust and company service providers (TCSPs) and Company Managers to ensure fair treatment of Clients and general protection of Clients' assets and monies in relation to the business of company management and trust business.

The Rules are binding and establish the minimum requirements which must be complied with when providing business of company management and trust business, whereas the guidance, not intended to be prescriptive or exhaustive, sets out CIMA's minimum expectations relating to the market conduct of TCSPs and Company Managers.

2.2. CIMA Regulatory Policy - Registration or Licensing of Virtual Asset Service Providers

CIMA has issued a regulatory policy (the "Policy") outlining the criteria for approving registration or licensing of Virtual Asset Service Providers ("VASPs").

The Policy applies to individuals or entities seeking registration to carry on virtual asset services in (or from within) the Cayman Islands and those seeking a licence to provide virtual asset custody services or to operate a virtual asset trading platform in or from the Cayman Islands.

The licensing component of this Policy will become effective only upon commencement of the licensing regime for virtual asset trading platform operators and virtual asset custodians, pursuant to the Virtual Asset (Service Providers) Act and corresponding Virtual Asset (Service Providers) Regulations.

2.3. CIMA REEFS Reporting Portal - User Experience Survey

CIMA has launched a user experience survey in an effort to address challenges faced by users of the Regulatory Enhanced Electronic Forms Submission ("REEFS") reporting portal. The survey covers various aspects including frequency and primary tasks of REEFS usage, satisfaction with user experience and functionality, challenges encountered while using the portal, suggestions for improvements to the features and interface of the portal, and feedback on training and support.

3. SANCTIONS

The Financial Reporting Authority (“FRA”) issued new Reporting Requirements under the Russia Sanctions Regime.

Immobilised assets reporting measure

A relevant firm is required to report to the Governor as soon as practicable if it knows, or has reasonable cause to suspect, that it holds funds or economic resources for a person to whom financial services must not be provided to under regulation 18A(1) (a “prohibited person”).

A prohibited person means the Central Bank of the Russia Federation, the National Wealth Fund of the Russian Federation, the Ministry of Finance of the Russian Federation, a person owned or controlled directly or indirectly by these entities, or a person acting on behalf of or at the direction of these entities.

Designated Persons asset reporting measure

Designated persons who are Territory Persons are required under regulation 70A(1) to report the nature, value and location of any funds or economic resources they own, hold or control in any jurisdiction (worldwide assets) in excess of US\$13,000 to the Governor. “Territory Person” is defined in regulation 2 of the Russia (Sanctions) (EU Exit) Regulations 2019, as modified.

Designated persons who are not Territory Persons are required under regulation 70A(2) to report the nature, value and location of any funds or economic resources they own, hold or control in the Cayman Islands (Territory assets) in excess of US\$13,000 to the Governor.

The initial report must be provided within 10 weeks of the relevant date, which is either:

- the date on which the modifying legislation came into force - 14 March 2024, or
- in the case of a person who was designated on or after 14 March 2024, the date of that person’s designation.

Any subsequent change to the nature, value or location of the funds or economic resources must be reported to Governor as soon as practicable.

4. CRS REPORTABLE JURISDICTIONS

The Cayman Islands Department for International Tax Cooperation (DITC) has announced the publication of the Common Reporting Standard (CRS) lists of participating jurisdictions and reportable jurisdictions.

The lists were published in the Official Gazette on 12 April 2024. The update includes the addition of Georgia, Kenya, Moldova, and Ukraine to the list of Reportable Jurisdictions for reports due from 2024 onwards. Armenia, Morocco, Rwanda, Senegal, and Tunisia have been added to the list of Reportable Jurisdictions for reports due in 2025 onwards, and Uganda is now included under reports due in 2025 onwards.

Georgia, Gibraltar, Kazakhstan, Liberia, Moldova, Montenegro, Morocco, Qatar, Uganda and Ukraine have been removed as Participating Jurisdictions.

5. INTERNATIONAL: FINANCIAL ACTION TASK FORCE (“FATF”) UPDATES

5.1. Status of Implementation of Recommendation 15 by FATF Members and Jurisdictions with Materially Important VASP Activity

In February 2023, the FATF Plenary agreed on a roadmap to strengthen implementation of the FATF Standards on virtual assets and virtual asset service providers (VASPs) (Recommendation 15) in order to prevent the misuse of virtual assets for illicit finance.

The FATF conducted a stocktake of current levels of implementation across the global network and published a [table](#) which sets out the status of implementation of Recommendation 15 by FATF members and other jurisdictions with materially important VASP activity.

The Cayman Islands is noted as being “Largely Compliant” in the table. The Ministry for Financial Services and Commerce has also recently completed a public consultation concerning proposed provisions of the Virtual Asset Service Providers Act relating to the licensing of virtual asset trading platforms and custodians and proposing revisions to the Act to facilitate this process as well as a number of changes to the Act which are necessary for the supervision of virtual asset services in the Cayman Islands.

5.2. Guidance on Beneficial Ownership and Transparency of Legal Arrangements

The FATF has updated its risk-based guidance for Recommendation 25 on beneficial ownership and transparency of legal arrangements. The guidance complements the existing guidance on Recommendation 24 on legal persons and aims to help stakeholders from the public and private sectors to implement the new requirements more effectively.

The Guidance aims to assist countries and the private sector to better understand how transparency requirements apply to legal arrangements. It sets out practical guidance on how to understand and assess the money laundering and terrorist financing risks associated with trusts and similar legal arrangements. It explains the FATF's requirements to obtain adequate, accurate and up-to-date beneficial ownership information for express trusts and similar legal arrangements, and highlights mechanisms to verify this information. The Guidance highlights the importance of international co-operation, given that such arrangements may potentially be abused to facilitate cross-border money laundering or terrorist financing.

The guidance reflects input from public consultations and extensive engagement with the private sector and other stakeholders. The guidance completes a comprehensive body of work aimed at improving transparency of beneficial ownership globally. FATF's strengthened standards and guidance in this area will help identify the corrupt actors, sanctions evaders, money launderers and tax evaders who hide or launder their criminal property or activities in shell companies or other complex structures as well as trusts or other legal arrangements.

The FATF will assess countries' implementation of these requirements during its upcoming round of mutual evaluations.

5.3. FATF Ministers Commit to Stepping Up Efforts to Fight Money Laundering, Terrorist and Proliferation Financing

The Ministers of the FATF reaffirmed their unwavering commitment to combat financial crime, and fully support the FATF as the global standard-setter for preventing and combatting money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction (AML/CFT/CPF).

FATF Ministers recognised that the FATF has led global efforts to effectively implement standards to regulate virtual assets and virtual assets service providers for AML/CFT/CPF but noted continued gaps in effective implementation of the FATF Standards. They committed to swiftly implement measures to improve the effectiveness of outcomes in tackling ML/TF and PF. The Ministerial Declaration also noted that further efforts were required on supervision and preventive measures, beneficial ownership transparency, investigating and prosecuting money laundering, and confiscating the proceeds of crime. Ministers reaffirmed their commitment to support jurisdictions to implement the tools needed to protect the financial system and the broader economy from the threats of illicit finance. Ministers also pledged to fully, swiftly and effectively implement the FATF Standards and to hold any member countries accountable if they fail to do so.

Ministers highlighted the significant threat posed by the proliferation of weapons of mass destruction (WMD) to international peace and security. Noting the FATF's reinforcement of the global response to this threat by adopting measures to help countries and the private sector to identify and assess risks of any breach, they encouraged all jurisdictions to implement these measures to prevent WMD proliferators from raising and moving funds.

In a highly interconnected global financial system, Ministers recognised the value of the strategic partnership with the Global Network and welcomed the positive steps taken to increase the voice of the Global Network in the governance of the FATF. Members agreed to prioritise strengthening its strategic partnership with and to provide longer term support to the Global Network, which brings together more than 200 jurisdictions united by a common commitment to tackle illicit finance by applying a single set of standards and a universal system of mutual evaluations.

5.4. Urgent Action Needed to Fight Money Laundering and Terrorist Financing say Heads of FATF, INTERPOL and UNODC

The heads of the FATF, INTERPOL and United Nations Office on Drugs and Crime (UNODC) stated at the 33rd Commission on Crime Prevention and Criminal Justice that countries need to urgently step up their efforts to target the huge illicit profits generated by transnational organised crime that facilitate conflicts, fund terrorism, and negatively impact vulnerable populations.

By focusing on the proceeds of crime and the illicit financial networks behind them, Member States can more effectively combat and disrupt organised crime networks and enhance the effectiveness of crime prevention efforts. Disincentivising criminal activity through targeting illicit profits would also positively impact across all Goals of the 2030 Sustainable Development Agenda, such as inclusive economic growth, financial stability, and strengthened institutions and governance.

While the three leaders highlighted recent enhancements to FATF's international standards on anti-money laundering and terrorism financing, they also called for accelerated progress on policy reforms and capacity building, the effective implementation of the risk-based approach, multi-sectoral partnerships, and technology as the key accelerators to boost effectiveness in the global fight against financial crime.

6. CONYERS WEBSITE ARTICLES & ALERTS

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

[Limited Partners' Extensive Right to True and Full Information](#)

[Economic Substance Enforcement Regime Overview](#)

[Handling a Cayman Islands Regulatory Administrative Fine](#)

[Key Insights from Cayman Islands Seminar on CIMA Onsite Inspections](#)

[ReConnect Recap 10: Takeaways from Cayman's First Reinsurance Conference](#)

[Cayman Islands: Virtual Asset Services Provider Legislation](#)

[Registering Private Funds with CIMA](#)

[Structuring a Cayman Islands Closed-Ended Fund](#)

[Cayman Islands Non-Petition Clauses: Precision Is Paramount](#)

[Cayman Islands Restructuring: Obtaining Consent in a Crisis](#)

[Ready, Jet, Go!](#)

[Directors' Duties – Two Stage Test for the Creditor Duty](#)



Key Contacts

[Róisín Liddy-Murphy](#)

[Sarah Howie \(Farquhar\)](#)

[Wayne Flanagan](#)

Other Contacts

[Erik Bodden](#)

[Alex Davies](#)

[Alan Dickson](#)

[Theo Lefkos](#)

[Robert Lindley](#)

[Cora Miller](#)

[Michael O'Connor](#)

[Derek Stenson](#)

[Matthew Stocker](#)

[Anna-Lise Wisdom](#)

[Philippa Gilkes](#)

[Matthew Harkness](#)

[Kiah Estwick](#)

[Nick Ward](#)

[Tonica Williams](#)

[Daniella Carrazana](#)

[Rebecca Peck](#)

[Jarladth Travers](#)

HOW CONYERS CAN HELP

Count on our Regulatory & Risk Advisory team to provide calm, authoritative guidance on all your Cayman Islands regulatory and risk management requirements. We can help you with everything from proactive guidance, insight into regulatory developments and dealing with regulatory bodies to advising on investigations and providing robust representation where litigation arises.

Please contact a member of the team should you wish to connect or to know more about any of the topics covered in this newsletter. To subscribe to our regulatory newsletter and updates, please [click here](#).

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