

NEWSLETTER

Regulatory & Risk Advisory  
Review: Cayman Islands

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CONYERS



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Welcome to the third Regulatory & Risk Advisory Review instalment of 2024. In this edition we cover the latest Cayman Islands regulatory updates including the Beneficial Ownership Transparency Act and The Perpetuities (Amendment) Act, as well as updates from CIMA, the DITC, and the FATF. As always, we have included articles and news from the wider Conyers team that may be of interest.

If you have any questions on the topics covered in this edition, 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 & Commerce has confirmed that although the BOT Act is now in force, enforcement under the new regime will not commence until early next year. The Beneficial Ownership Transparency Regulations, 2024 were gazetted on 31 July 2024. Registered offices and other corporate service providers had been required to file relevant beneficial ownership information for their entities on a monthly basis under the prior regime, but these monthly uploads have now been suspended until the Ministry notifies them to recommence filing in accordance with the new regime.

Conyers will be reaching out to clients who will be affected by the new BOT Act to guide them through the transition to the new regime and to advise them on the necessary actions in order to ensure compliance by 1 January 2025.

### 1.2. The Perpetuities (Amendment) Act, 2024

The Perpetuities (Amendment) Act, 2024 (the “Act”) has come into force in the Cayman Islands, providing for the disapplication of the rule against perpetuities for Cayman Islands ordinary trusts. This legislative development aims to provide greater flexibility for trusts and align the Cayman Islands with other leading international financial jurisdictions which already allowed for the creation of dynastic trusts which can last indefinitely.

The Act permits the settlor of a new trust (provided such trust does not hold any land or any interest in land in the Cayman Islands) to choose whether or not to disapply the rule against perpetuities for any new Cayman Islands ordinary trust and to create a trust with an unlimited duration. However, if the settlor does not expressly disapply the rule against perpetuities, the rule will continue to apply and the trust will therefore have a maximum perpetuity period of 150 years.

The Act allows settlors, enforcers and trustees of existing Cayman Islands law governed trusts to apply to the Grand Court of the Cayman Islands for the disapplication of the rule against perpetuities so that those trusts can last indefinitely. It also provides that the rule against perpetuities will not be applicable where a foreign trust changes its governing law to Cayman law if the rule was not previously applicable under the trust’s former governing law.



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

### 2.1. Electronic Submission of Applications for Audit Waivers for Regulated Mutual and Private Funds

The Cayman Islands Monetary Authority (CIMA) is advising of an update to the process of submitting 'Audit Waiver' applications for regulated funds. The enhancement to the submission process will enable the processing of Audit Waiver applications to be fully completed within the Regulatory Enhanced Electronic Forms Submission ("REEFS") portal.

Applications for Audit Waivers are to be submitted through the REEFS portal using the form FWV-161-22 (the "Form"). Since 27 May 2024, all new Audit Waiver applications must be filed via the REEFS portal. Please note that the relevant application fee can only be paid via local cheques or escrow payments. Should you require guidance completing the Form, or information on the Audit Waiver application process, please refer to the applicable [Completion Guide](#).

### 2.2. CIMA Issues its 2023 Annual Report

CIMA recently issued its 2023 Annual Report (the "Annual Report"), the content of which sets out the strong state of the financial services sector in the Cayman Islands and demonstrates the continued sound oversight from the regulatory authority. The Annual Report confirmed that the Cayman Islands remains the offshore jurisdiction of choice for investments with over 29,000 regulated funds as of December 2023. There was also evident strength in the securities and virtual asset industries with 45 licenced and over 1500 registered securities investment businesses, while 19 virtual asset service providers (VASPs) have been registered in the Caymans Islands since the introduction of the VASP regime in 2020.

Overall, the Annual Report provides a robust industry overview along with a comprehensive breakdown of organisational updates with respect to CIMA, including regulatory developments, enforcement actions and much more.

For those who wish to read the Annual Report in full, please [click here](#).



### 3. SANCTIONS

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

#### **General Licence GL/2024/0001 for Legal Services**

General Licence GL2023/0003 (subject to certain conditions), in effect from 15 November 2023, initially permitted an attorney or law firm who has provided legal advice to a person designated under either the Russia or Belarus regime to receive payment from that designated person (DP) without a specific licence issued by the Governor of the Cayman Islands (the “Governor”), expired 15 May 2024.

On 24 May 2024, the Governor issued General Licence GU2024/0001 which (subject to certain conditions) (the “General Licence”) permits an attorney or law firm who has provided legal advice to a DP under either the Russia or Belarus regime to receive payment from that DP without a specific licence issued by the Governor, provided that the terms of General Licence are met.

Any persons intending to use General Licence should consult the copy of the General Licence on the FRA website for full details. The main changes (when compared to General Licence GL2023/0003) are:

- The attorneys’ fees and expenses caps have been reset. Users will be able to make use of the attorneys’ fees caps (US\$600,000) and the expenses caps (10% of the legal fees up to US\$60,000) under Parts A and B of the General Licence.
- The Attorneys’ fees and expenses caps now apply to each Law Firm instructed by the DP to cover all matters on which that law firm is instructed by that DP. This is a change from previous legal services general licences where the fee and expenses caps applied to each DP (i.e., for all the DP’s legal work across all firms they instructed).
- Part B of the General Licence now permits brief fees and refresher fees to be paid to an Attorney in the event these are fixed fees and not subject to hourly rates. These fees may now be included in the overall cap of US\$600,000 for attorneys’ fees. This is a change from previous legal services general licences where attorneys’ fees were subject to hourly rates listed in paragraph 11 of that part of the licence in any individual case.

Any payments received under General Licence must be reported to the Governor within 14 days of the payment being received, with the details and supporting evidence requested in Part A or Part B. A DP or person relying on the General Licence must keep accurate, complete and readable records, on paper or electronically, of any activity purporting to have been permitted under this licence for a minimum of 6 years.

The permissions in the General Licence do not authorise any act which a person carrying out the act knows, or has reasonable grounds for suspecting, will result in funds or economic resources being dealt with or made available in breach of sanctions legislation, save as specifically permitted under this General Licence or other licences issued by the Governor.

#### **4. Department for International Tax Cooperation (DITC) Update**

The DITC's Update Bulletin, released in June 2024, reported that approximately 10 percent of Financial Institutions (FI) that submitted CRS XML Returns failed to report a date of birth (DoB) for individual account holders and/or controlling persons.

The DITC reminded the industry that the Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations (2021 Revision) require the DoB to be reported for all individuals who are "Reportable Persons", i.e. both for account holders and Controlling Persons.

Please refer to the DITC [Explanatory note](#) for more information.

Within the CRS XML schema, the DoB element is labelled "(Optional) Mandatory". For the avoidance of doubt, where an FI holds this information within its records, it is required to be included within the CRS XML Return.

The DITC expects that an FI will hold DoB information in its records, irrespective of whether the account is a pre-existing account under the CRS, due to anti-money laundering obligations (e.g. requirement to collect a valid passport that contains a DoB). Therefore, the DITC will review submitted returns as part of its annual compliance and enforcement activities, with a focus on FIs that fail to report a DoB.

FIs must ensure the correct DoB is provided for all account holders and Controlling Persons in CRS XML Returns for the 2023 Reporting Period (deadline to report is 31 July 2024).

Failure to include the DoB in a CRS XML Return may result in compliance and enforcement action being taken against the FI.



## 5. INTERNATIONAL: Financial Action Task Force (FATF) Updates

### 5.1. Virtual Assets (VAs): Targeted Update on Implementation of the FATF Standards on VAs and VASPs

The July 2024 report (the “Report”) finds that while some jurisdictions have made progress in putting anti-money laundering and countering of terrorist financing (AML/CFT) regulations in place, global implementation is still lagging. Based on 130 FATF mutual evaluation and follow-up reports since the revised R.15/INR.15 was adopted in 2019, 75% of jurisdictions are only partially or not compliant with FATF’s requirements, which is identical to that of April 2023 (75% partially compliant or non-compliant jurisdictions; 73 of 98) and shows negligible improvement.

The Report notes that a majority of countries with materially important virtual asset sectors have core measures in place but there remains work to do in order to complete the global system of AML / CFT regulation for the virtual asset sector. Jurisdictions continue to struggle with the implementation of the fundamental requirements of R.15, particularly undertaking a risk assessment and conducting supervisory inspections. There have been some areas of progress since 2023, however, such as the number of jurisdictions which have registered or licensed VASPs in practice.

Jurisdictions have not made sufficient progress in implementing FATF’s “Travel Rule”, which is a key AML/CFT measure. Nearly one third of the survey respondents, including some who assessed VA/VASPs as high risk, have not yet passed legislation implementing the Travel Rule and among jurisdictions who have passed legislation implementing the Travel Rule, supervision and enforcement remains low.

FATF calls on all jurisdictions to rapidly implement FATF’s Standards on VAs and VASPs, including the Travel Rule.

## 5.2. Mitigating the Unintended Consequences of the FATF Standards

FATF took the initiative in 2021 to investigate whether AML/CFT measures are responsible for de-risking, financial exclusion, and the suppression of non-profit organisations (NPOs) and human rights.

In 2023, revisions were made to FATF's Recommendation 8 on NPOs, and guidance updated on good and bad practises, aiming to ensure measures to safeguard the NPO sector against money laundering and terrorist financing are targeted and proportionate, and that governments do not suppress civil society through over-application of FATF's standards. Work is underway to help countries better understand the implications of these changes as part of a broad, proactive programme of outreach, monitoring, and coordination with other bodies in the international framework, including the UN Special Rapporteurs, UNCTED, UNODC, financial inclusion and NPO stakeholders amongst others.

FATF also intends to revise Recommendation 1 to better enable financial inclusion among FATF members which will enable simplified due diligence in cases where it is warranted. FATF is also working on preventing overreach and abuse of the FATF standards.

Further work on procedures for handling unintended consequences and abuse of the FATF Standards is ongoing and was highlighted in the 2024 FATF Ministerial Declaration. This will allow FATF to more effectively respond to the misapplication of FATF's Standards relating to the undue targeting of NPOs, as they arise.

## 5.3. Horizontal Review of Gatekeepers' Technical Compliance Related to Corruption

Given the inextricable link between corruption and money laundering, FATF took action over 20 years ago to address the vulnerability of gatekeepers - lawyers, accountants, trust and company service providers, and real estate agents - to money laundering and corruption threats. Professions were equipped with the necessary know-how to detect indications of possible crimes.

FATF's Horizontal Review (the "Horizontal Review") assessed the current state of play and identified areas that FATF members must prioritise for further improvement. While over half of FATF members have scores over 80%, seven FATF members, representing more than half of the world's gross domestic profit, fall below the score of 50%.

The Horizontal Review found that although it is a common perception that the legal profession is subject to fewer AML/CFT rules than other gatekeeper sectors, there is little difference in coverage scores of the four gatekeeper sectors under the scope of the review - lawyers, accountants, trust and company service providers, and real estate agents.

The Horizontal Review found that some cornerstone obligations of the FATF Recommendations fall behind the compliance levels of other obligations. These requirements include conducting customer due diligence, implementing internal controls, and providing a supervisor with adequate powers to conduct risk-based supervision and are considered essential requirements to address the vulnerability of gatekeepers to money laundering and corruption threats.

It is urgent that those FATF members still lagging behind ensure gatekeepers are adequately covered, in line with FATF's longstanding Recommendations in this area.



## 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:

[Disapplication of the Rule Against Perpetuities Takes Effect in the Cayman Islands](#)

[The New Cayman Islands Beneficial Ownership Regime is Now in Force](#)

[Shifting Sands: The Future of Offshore Regulatory Disputes \(Part 1\)](#)

[The Impact of Cayman's Revised Beneficial Ownership Regime on Trusts and Private Wealth Structures](#)

[Economic Substance Enforcement Regime Overview - Applicable to Insurance Entities](#)

[Virtual Asset Service Providers - CIMA Regulatory Policy](#)

[Cryptocurrency: the Next Chapter in the Valuation Conundrum](#)



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## 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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