

Stay Informed with Regulatory Updates from the Cayman Islands

Authors:

Craig T. Fulton, Partner

Ryan McConvey, Associate

The Cayman Islands has recently seen the passing of a number of laws to improve the Island's regulatory framework in support of the international financial system's integrity. These laws are intended to maintain the jurisdiction's adherence to international standards and, in particular, better align the jurisdiction with the recommendations of the Financial Action Task Force ("FATF"); the inter-governmental body that sets the standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

This alert touches on some of the recent legal and regulatory developments in the Cayman Islands, which may be of interest to our clients.

The Proceeds of Crime Law (2017 Revision) and The Anti-Money Laundering Regulations, 2017

The *Proceeds of Crime Law (2017 Revision)* (the "POCL") is the primary piece of legislation in the Cayman Islands dealing with anti-money laundering and combatting of terrorist financing ("AML"). The POCL applies to all businesses and individuals and is supported by *The Anti-Money Laundering Regulations, 2017* (the "AML Regulations"), which were gazetted on 20 September 2017, and came into force on 2 October 2017.

Recent amendments to the POCL include, amongst other things, the widening of activities that fall within the definition of 'relevant financial business', to conform with the activities considered to be relevant financial business in accordance with international standards. In addition to the previously prescribed activities, 'relevant financial business' now includes: (i) "otherwise investing, administering or managing funds or money on behalf of other persons"; and (ii) underwriting and placement of life insurance and other investment related insurance". The definition of 'relevant financial business' has been adopted by the AML Regulations which now infer the application of the same term, as expanded, under the principal law.

The amendments to the AML Regulations bring about significant changes to the Cayman Islands AML regime to keep it closely aligned with the FATF recommendations. The AML Regulations introduce a new risk-based approach to AML in the Cayman Islands, including enhancements for addressing high-risk situations and tougher sanctions for any breach. The practical application of the risk rating methodology for customer relationships will likely be expanded upon in the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (the "Guidance Notes") which shall be updated in due course. The Guidance Notes will be of significant importance when seeking to clarify and interpret the AML Regulations and we will issue a further alert once the Guidance Notes are available.

The Monetary Authority (Amendment) Law, 2016 and The Monetary Authority (Administrative Fines) Regulations, 2017

The *Monetary Authority (Amendment) Law, 2016* (the “Amendment Law”) seeks to address advice given by the European Securities and Markets Authority (“ESMA”) in July 2016 relating to the extension of the *European Alternative Investment Fund Managers Directive* (“AIFMD”), marketing passport to non-EU alternative investment fund managers and alternative investment funds established in non-EU third countries that are assessed as equivalent.

The Amendment Law is not yet in force and is pending publication of The *Monetary Authority (Administrative Fines) Regulations, 2017* (the “MA Regulations”), which will set out the rules and guidance regarding the amount of fines and the exercise of power (and application of any discretion), including procedures of imposing fines, appeals, payment and enforcement. A draft of the MA Regulations is currently available in consultation form and we will issue further updates once these regulations come into force.

The Amendment Law will give the Cayman Islands Monetary Authority (“CIMA”) powers that are in line with the powers granted to onshore regulators to impose administrative fines for breaches of regulatory laws and regulations (including the AML Regulations). A breach under the Amendment Law will be categorised as minor, serious or very serious with a sliding scale of fines ranging from approximately US\$6,000 for a minor breach up to US\$120,000 for individuals and up to US\$1,220,000 for entities for a very serious breach. A more detailed alert will follow once the MA Regulations are in final form.

Cayman Islands Monetary Authority, Statement of Guidance – Nature, Accessibility and Retention of Records

CIMA has recently published an updated Statement of Guidance on the Nature, Accessibility and Retention of Records (the “Guidance”) to ensure that persons and entities that are licensed under Cayman Islands regulatory laws maintain records in a manner that supports accessibility and transparency. The Guidance is the result of research conducted by CIMA and feedback received from industry participants and sets out the minimum standard for record keeping that CIMA expects of relevant persons or entities.

The Guidance sets a minimum time period of five years after a transaction date, that relevant entities should maintain records in their “original format”, including electronic copies of paper-based records. Electronic records should be easily accessible and should be provided within one to three business days from the time that they are requested by CIMA, irrespective of the jurisdiction within which the records are stored. Records must also be kept in such a way as to enable CIMA to identify a particular transaction and track the transaction through the accounting systems of the relevant entity.

Records which CIMA expects a relevant entity to keep include, amongst other things: (i) accounting records; (ii) employee and administrative records; (iii) risk management policies; (iv) corporate records; (v) client due diligence; (vi) client communications and complaints; and (vii) annual returns.

For additional information, please contact your usual Conyers Dill & Pearman representative.

AUTHORS:

CRAIG T. FULTON

PARTNER

craig.fulton@conyersdill.com

+1 345 814 7372

RYAN MCCONVEY

ASSOCIATE

ryan.mcconvey@conyersdill.com

+1 345 814 7356

GLOBAL CONTACTS:

FAWAZ ELMALKI

DIRECTOR

HEAD OF DUBAI OFFICE

fawaz.elmalki@conyersdill.com

+9714 428 2900

CHRISTOPHER W.H. BICKLEY

PARTNER

HEAD OF HONG KONG OFFICE

christopher.bickley@conyersdill.com

+852 2842 9556

LINDA MARTIN

DIRECTOR

HEAD OF LONDON OFFICE

linda.martin@conyersdill.com

+44(0)20 7562 0353

ALAN DICKSON

DIRECTOR

HEAD OF SINGAPORE OFFICE

alan.dickson@conyersdill.com

+65 6603 0712

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