

UPDATE

The Cayman Islands' Confidential Relationships (Preservation) Law to be repealed before year end

Update prepared by Simon Dickson (Partner, Cayman Islands)

On 11 May 2016, the Cayman Islands' Government published the Confidential Information Disclosure Bill 2016 (the CID Bill). If it is passed into law, the CID Bill will repeal the Confidential Relationships (Preservation) Law (2015 Revision) (the CRPL) and establish a new statutory regime for the disclosure of confidential information in the Cayman Islands.

Many of the provisions of the CRPL will continue to survive in some form, with the most notable change being the decriminalisation of unlawful disclosures of confidential information. The CID Bill appears to be more of an enabling piece of legislation compared to the punitive approach adopted by the CRPL.

The CRPL currently makes it a criminal offence to divulge confidential information other than in specified circumstances. The 'gateways' through which permitted disclosures of confidential information may presently occur include disclosures made:

- pursuant to requests by local law enforcement and financial regulatory authorities (including the police, the Grand Court, the Cayman Islands Monetary Authority (**CIMA**) and the Cayman Islands Anti-Corruption Commission);
- in accordance with Cayman's Mutual Legal Assistance Treaty with the USA or pursuant to lawful international requests from CIMA for forwarding to other foreign regulators;
- with the prior consent of a business entity's principal; or
- pursuant to a duty or right created by any other law or regulation.

Given that there have been no prosecutions in the almost 40 year period since the CRPL was introduced, it could be argued that the strict penalties for committing offences under the CRPL (up to two years' imprisonment and a fine of CI\$5,000) are practically ineffectual.

A new gateway

In addition to preserving the existing gateways mentioned above, clause 3(2) of the CID Bill (in its current form) also provides that disclosure in relation to 'a serious threat to the life, health, safety of a person or in relation to a serious threat to the environment' is permissible in certain circumstances. Such disclosure is permissible dependent upon the individual disclosing the information in good faith and in the reasonable belief that the information provided is true and discloses evidence of wrongdoing. This gateway is reminiscent of many whistle-blowing provisions.

Continuing obligation to seek directions from the Grand Court

The CID Bill maintains the existing requirement to apply to the Grand Court for directions before giving any evidence of a confidential nature unless the prior express consent of the relevant principal has been obtained.

The court's power to direct that such evidence be given, or withheld, or only given subject to specified conditions, remains unaltered by the terms of the CID Bill.

Penalties for breaches of confidentiality

The CID Bill does not contain any specific penalties for contravening its provisions, thus the court will apply common law and rules of equity in the event of a breach.

Conclusion

The decriminalisation of unlawful acts of disclosure is welcomed. It is expected that the CID Bill will be voted upon by lawmakers by September 2016. We shall keep you apprised of any changes prior to the bill being enacted into law.

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