

UPDATE

The Confidential Information Disclosure Law: increasing corporate transparency

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The Confidential Relationships (Preservation) Law, often unfairly dubbed a 'banking secrecy law' was repealed on 22 July 2016 and replaced with a new Confidential Information Disclosure Law. The provisions of the new law are framed to demonstrate that the Cayman Islands does not support so-called 'secrecy' legislation, but strives to maintain appropriate respect for the privacy of individuals and corporate entities whilst providing avenues for the safe transmission of information in the interests of transparency and justice.

The Cayman Islands' Confidential Relationships (Preservation) Law (the **CRPL**) – often unfairly dubbed a 'banking secrecy' law – was repealed on 22 July 2016 and replaced by a new statutory confidentiality regime in the form of the Confidential Information Disclosure Law, 2016 (the **CID Law**). The new framework has been implemented as part of the Cayman Islands' commitment to being at the forefront of international standards on tax transparency as well as cooperation between taxation and law enforcement authorities globally.

Originally enacted 40 years ago, the CRPL made it a criminal offence for a person to disclose without consent any confidential information obtained during the course of business, subject to certain limited exceptions. The CID Law removes the criminal sanction for breach of confidence, and establishes several clear gateways – or safe harbours – through or within which confidential information may be disclosed without prior consent of the person to whom the information relates.

The introduction of the CID Law follows on from a number of other measures already taken by the Cayman Islands Government to further comply with and promote its reputation for transparency and cooperation. This step consolidates bridges which the jurisdiction has built with organisations such as the Organisation for Economic Cooperation and Development (**OECD**), the International Monetary Fund (**IMF**) and other national tax and law enforcement authorities, through measures which include:

- tax information sharing arrangements with almost 90 countries, including intergovernmental agreements for the sharing of information with tax authorities in the USA and the UK;
- a commitment to introduce a new Data Protection Law which would establish a data protection regime which is on a par with legislation already in place in the European Union, and which is expected to acknowledge privacy as a basic human right; and
- a framework for centralised access to information about the beneficial owners of Cayman Islands companies, and an information sharing regime by which overseas tax and law enforcement authorities may on request be provided with those details.

Enabling Disclosure

Having removed the criminal offence created by the CRPL, the CID Law creates certainty that, when a duty of confidentiality arises during the course of business, the disclosure of information in the circumstances set out below 'shall not constitute a breach of the duty of confidence and shall not be actionable at the suit of any person':

- pursuant to requests by local tax, law enforcement and financial regulatory authorities (including the police, the Grand Court, the Cayman Islands Monetary Authority (**CIMA**), the Financial Reporting Authority, the Director of Public Prosecutions and the Cayman Islands Anti-Corruption Commission);
- in compliance with an order or request of a Cayman Islands authority pursuant to its international obligations, such as the Mutual Legal Assistance Treaty with the USA or the Criminal Justice (International Cooperation) Law;
- in the normal course of business or with the consent, express or implied, of a principal; and
- in accordance with, or pursuant to, a right or duty created by any other law or regulation of the Cayman Islands.

The CID Law affirms that the Cayman Islands Government is cognisant of, and supports, the need for local and international services providers to fulfil all relevant reporting obligations pursuant to international law.

Protecting the Public Interest

By introducing a 'whistle-blowing' provision that aims to protect a person disclosing confidential information on wrongdoing, or in relation to a serious threat to life, health, safety of a person or in relation to a serious threat to the environment, the Cayman Islands has become one of a growing number of jurisdictions that specifically legislates to protect those who act in the public interest.

A person making such a disclosure now has a defence to an action for breach of confidence 'provided' that the individual acted in 'good faith' and in the 'reasonable belief' that the information was substantially true and discloses evidence of wrongdoing, of a serious threat to life, health, safety of a person or in relation to a serious threat to the environment.

Continuing Obligations to seek direction from the Grand Court

The CID Law retains one of the requirements of the CRPL that, unless the prior express consent of the principal has been obtained to giving evidence of a confidential nature, directions be sought from the Grand Court prior to disclosing confidential information during proceedings. The court's power to direct that such evidence is given, withheld or given subject to specified conditions remains unaltered by the CID Law.

Penalties

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

Conclusion

We welcome the decriminalisation of unlawful acts of disclosure.

The provisions of the CID Law are framed to demonstrate that the Cayman Islands does not support so-called 'secrecy' legislation, but rather maintains appropriate respect for the privacy of individuals and corporate entities whilst providing avenues for the safe transmission of information in the interests of transparency and justice.

The CID Law proves, yet again, that the Cayman Islands is committed to working closely with the OECD, the IMF and other international tax and law enforcement authorities and governments to improve corporate and tax transparency and to dispel the myth that the jurisdiction provides a veil of secrecy behind which unlawful activity may be conducted.

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