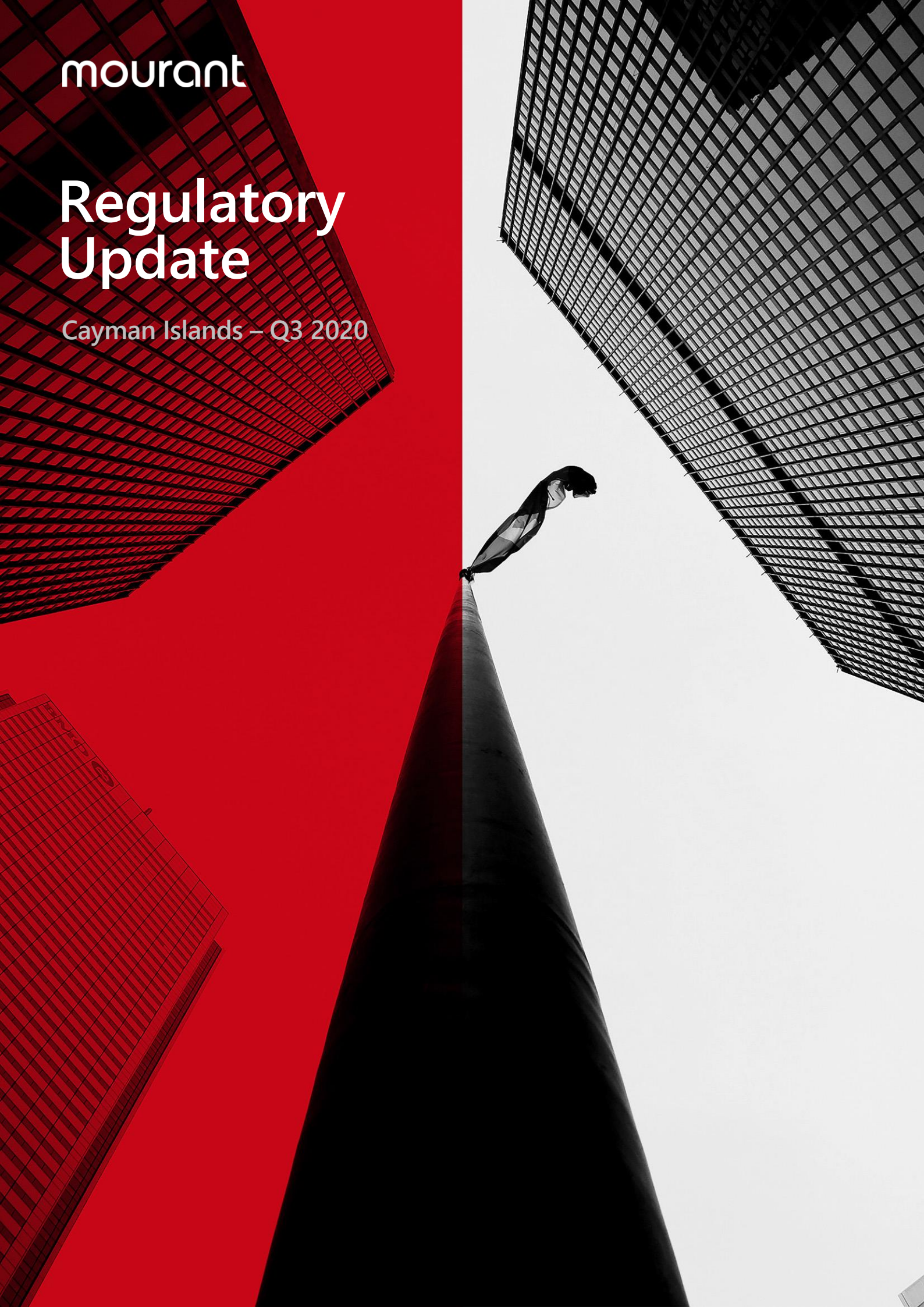


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# Regulatory Update

Cayman Islands – Q3 2020



# Quick Fire Updates

## 1. Registration deadline approaching fast: Cayman private funds and limited investor funds

Private funds and limited investor funds existing prior to 7 February 2020, as well as new private funds launched between 7 February 2020 and 6 August 2020, have until **7 August 2020** to register with the Cayman Islands Monetary Authority (CIMA).

Please see our Update [here](#) for more information.

## 2. Reduced annual fees for private fund partnerships

The Exempted Limited Partnership (Amendment) Regulations, 2020 were gazetted on 22 May 2020. With effect from that date, exempted limited partnerships (ELPs) which are regulated under the Private Funds Law, 2020 (the PFL) will benefit from the same annual fee saving as those ELPs regulated under the Mutual Funds Law (2020 Revision) (as amended, the MFL).

The annual fees are as follows:

- CI\$1,200 (US\$1,463) for ELPs regulated under the MFL or PFL; and
- CI\$2,000 (US\$2,439) for unregulated ELPs.

## 3. CIMA publishes new Rules & updates private fund FAQs

CIMA has published new Rules relating to regulated mutual funds and private funds, including in relation to the content of offering documents/ marketing materials and cybersecurity.

Copies of the Rules can be accessed at CIMA's website [here](#).

CIMA's private funds FAQs were also updated in May 2020 and can be found [here](#).

## 4. Reminder – Economic substance notifications and annual returns

The deadline for filing economic substance notifications (ESNs) and the 2020 annual return (without penalties) expired on 30 June 2020.

Any company or limited liability company (LLC) which has not filed its ESN and annual return for this year will be subject to penalties as of 1 July 2020. The penalty fee in effect will be one third of the applicable annual return fee due.

Any outstanding filings should be made as soon as possible to avoid incurring further late filing penalties.

## 5. New DITC Portal

The Cayman Islands Automatic Exchange of Information (AEOI) Portal is currently offline and the Cayman Department for International Tax Co-operation (the DITC) is currently developing a new 'DITC Portal' for registration (notification) and reporting purposes, which will eventually encompass all legislative frameworks, including economic substance.

The launch date for the new DITC Portal will be provided in due course.

## 6. 2019 FATCA & CRS reporting deadlines extended

In response to the FAQs issued by the US Internal Revenue Service on 14 April 2020, the DITC has extended the Cayman 2019 FATCA reporting deadline to **16 November 2020**. This extension was subsequently applied to the 2019 CRS reporting, which is also now due for submission by **16 November 2020**.

A copy of the DITC's News & Updates in relation to FATCA and CRS can be found [here](#).

## 7. New CRS Compliance Form released

On 15 April 2020, the DITC released a new [CRS Compliance Form](#), together with [Notes](#) for users of that form. A more detailed user guide is expected to be published in due course.

The CRS Compliance Form must be completed annually by each Cayman Reporting Financial Institution (as well as Trustee Documented Trusts) in relation to the same period as the relevant CRS return and can only be completed via the DITC's online portal. Going forward, the deadline for submission of the form will be 15 September in each year. However, the deadline for submission of the first CRS Compliance Form, relating to the 2019 reporting period, is **31 December 2020**. Automatic fines will be imposed in respect of any failure to meet the filing deadline.

The purpose behind the CRS Compliance Form is to enable the Tax Information Authority (TIA) to use the information collected to analyse and assess compliance with, and effective implementation of, the CRS within the Cayman Islands.

Please contact us for information regarding assistance with any AEOI (including FATCA and CRS) reporting obligations.

## 8. Beneficial ownership filings to be made online

The General Registry of the Cayman Islands launched an online filing system for beneficial ownership (BO) information on 19 May 2020, replacing the 'air tight' system previously utilised by industry.

BO information filed with the Registrar in Cayman is not public information, though may be searched upon request from certain bodies, including CIMA, the DITC, the Financial Intelligence Unit, the Financial Reporting Authority and the Financial Crime Unit of the Royal Cayman Islands Police Service (RCIPS).

# Quick Fire Updates

## 9. Amendments to Cayman's beneficial ownership legislation

Legislation amending the Cayman beneficial ownership regime, as set out in Part XVIIIA of the Companies Law (2020 Revision) (as amended, the **Companies Law**) and Part 12 of the Limited Liability Companies Law (2020 Revision) (as amended, the **LLC Law**), took effect on 15 May 2020 and 29 June 2020 (though some provisions have not yet been brought into force).

Some of the main changes which have come into force are summarised below:

- The definition of 'beneficial owner' was amended to capture persons owning 25% or more of (a) the shares or interests of the relevant company/LLC or (b) the voting rights of the relevant company/LLC.
- The Law was changed to clarify that for the purposes of the exemptions to the BO register requirement, a company/LLC is a 'subsidiary' of one or more exempted entities where 75% or more of the shares/interests or voting rights are held by one or more exempted entities.
- The definition of 'regulatory laws' was amended to include the Directors Registration and Licensing Law, 2014 and the Private Funds Law, 2020.
- For the purposes of those entities to which the BO legislation does not apply, references to 'excluded persons' under the Securities Investment Business Law (2020 Revision) (**SIBL**) were deleted to reflect the change in registration regime under SIBL. Registered persons under SIBL are exempt from the requirement to maintain a BO register.
- New provisions have been introduced setting out an administrative fines regime which empowers the Registrar to impose administrative fines on persons who breach certain provisions of the BO legislation (see more on this below).
- It is now within the discretion of the corporate service provider maintaining a BO register, and not the relevant company/LLC, to issue a restriction notice under the BO legislation.

Our Guide on Cayman's beneficial ownership register regime can be found [here](#).

## 10. Extension of administrative fines to breaches of beneficial ownership regime

As noted above, the Companies Law and LLC Law have been amended to allow the Registrar to impose administrative fines in relation to breaches of the Cayman BO legislation.

The legislation, which came into effect on 29 June 2020, provides that:

- the fine for an initial breach is CI\$5,000 (US\$6,098);
- the Registrar may impose a further fine of CI\$1,000 (US\$1,220) for every month which the breach continues (up to a maximum of CI\$25,000 (US\$30,488); and
- the Registrar may issue guidance on the enforcement of administrative fines.

In addition, a new section has been inserted into the Companies Law and the LLC Law which, from 29 June 2020, allows the

Registrar to strike off a company where an administrative fine imposed under the new provisions remains unpaid for 90 days.

It is, therefore, going to be increasingly important to ensure that each company's and LLCs beneficial ownership information is up-to-date and filed with the Registrar on a timely basis.

## 11. New public register of Cayman companies

The recent amendments to the Companies Law also introduce a new register of companies which will be kept by the Registrar and will be open to inspection by any person on payment of a CI\$50 (US\$61) fee.

The provisions relating to the new register are not yet in force. However, the register of companies will contain the following information:

- the name of the company (and, if an exempted company, the dual foreign name and translated name);
- the part of the Cayman Islands in which the registered office is situated;
- the amount of capital of the company (and, in the case of a company having its share capital divided into shares of a nominal or par value, the number of shares into which it is divided and the fixed amounts thereof);
- the names and addresses of the subscribers to the memorandum and the number of shares taken by each subscriber;
- the dates of execution and filing of the memorandum of association;
- the company number;
- if applicable, a statement that the company is limited by guarantee or is unlimited; (Note: such companies may omit any irrelevant or inappropriate particulars in this list)
- the nature of the business; and
- the date of the end of the company's financial year.

The same amendment legislation will require each company to state the nature of the company's business on its annual return.

## 12. Public inspection of LLC registration statements

The same amendment legislation effecting changes to the BO regime as applicable to LLCs also provides that registration statements filed in respect of LLCs will be open to inspection by any person on payment of a CI\$50 (US\$61) fee. In addition, the registration statement filed in respect of an LLC will be required to include the following additional information:

- the nature of the LLC's business; and
- the date of the end of the LLC's financial year.

The provisions described above are not yet in force.

# Quick Fire Updates

## 13. Cayman introduces Virtual Asset (Service Providers) Law, 2020

The Cayman Islands Government introduced the Virtual Assets (Service Providers) Law, 2020 (the **VASP Law**) in late May 2020, relating to the supervision and regulation of virtual asset services taking place within, or originating from, the Cayman Islands.

See our Update [here](#) for more information on the VASP Law,

The VASP Law was accompanied by a suite of amendment legislation making the following (amongst other) consequential amendments:

- The Monetary Authority Law (2020 Revision) has been amended to include the VASP Law within the definition of 'regulatory laws'.
- The Securities Investment Business Law (2020 Revision) has been amended to, amongst other things, include virtual assets within the definition of 'securities' thereunder;
- The Mutual Funds Law (2020 Revision) has been amended so that the definition of 'equity interest' includes shares, partnership interests and any other representation of an interest.
- The Stock Exchange Company Law (2014 Revision) has been amended to reflect that the Cayman Islands Stock Exchange will not have the exclusive right to operate the securities markets trading in virtual assets. in the Cayman Islands
- The Anti-Money Laundering Regulations (2020 Revision) have been amended, as described below.

## 14. Amendment of Cayman AML Regulations

The Anti-Money Laundering Regulations (2020 Revision) (as amended, the **AMLRs**) were amended in late May 2020. The amendments largely relate to virtual assets and virtual asset service providers (**VASPs**). However, the requirements relating to eligible introducer arrangements were also amended. In addition to the existing requirements, an introducer must now also (i) be supervised or monitored by a supervisory authority or overseas regulatory authority and (ii) have measures in place for compliance with customer due diligence (**CDD**) and record-keeping requirements.

A new Part XA has been inserted into the AMLRs dealing with identification and record-keeping requirements relating to transfers of virtual assets, which are separate to those dealing with wire transfers. This Part borrows new terminology from the VASP Law.

In addition, the AMLRs make it clear that CDD must be undertaken by a VASP in respect of each one-off transaction carried out (without the CI\$10,000 (US\$12,195) threshold usually applicable).

## 15. Country risk assessments from 5 August 2020

It should be noted that, with effect from 5 August 2020, reliance on the Anti Money Laundering Steering Group (**AMLSG**) list of jurisdictions with equivalent AML/CFT legislation will no longer be possible when risk-assessing customers, investors or investments. In addition, regulated entities, including investment funds, considering engaging non-Cayman service providers must specifically consider country risk prior to entering into the outsourcing arrangement.

With effect from 5 August 2020, the AMLRs will be amended to include a new Regulation 8A, which will require the consideration of certain factors from 'credible sources' when making a country or geographic area risk assessment. Such factors include whether the country/geographic area:

- has been identified by credible sources as having effective systems to counter money laundering, terrorist financing and proliferation financing;
- has been identified by credible sources as having significant levels of corruption, terrorism and money laundering;
- is subject to sanctions relating to money laundering, terrorist financing and proliferation financing issued by the United Kingdom or the United Nations; and
- has been identified by the Financial Action Task Force (**FATF**) as a country/geographic area to which counter-measures or enhanced due diligence measures should be applied.

'Credible sources' include publications of the FATF, the International Monetary Fund, the World Bank, the Organization for Economic Co-operation and Development (OECD) and the United Nations.

We have created a country risk assessment solution for those persons relying heavily on the AMLSG list to conduct client due diligence or risk assessments in practice. Please contact us for more information in this regard.

## 16. Adoption of updated AML/CFT Guidance Notes

CIMA has issued revised Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Finance in the Cayman Islands (5 June 2020).

The updated Guidance Notes can be found on CIMA's website [here](#).

The primary change within the 2020 Guidance Notes is to remove references to the AMLSG list of jurisdictions considered to have equivalent AML/CFT legislation to that of the Cayman Islands.

# Quick Fire Updates

## 17. Extension of administrative fines regime

The Monetary Authority (Administrative Fines) (Amendment) Regulations, 2020 were gazetted on 26 June 2020 and came into force immediately.

The Amendment Regulations replace Schedule 1 of the Monetary Authority (Administrative Fines) Regulations (2019 Revision), which lists those 'prescribed provisions' in respect of which administrative fines can be levied, as well as the categorisation of those breaches as minor, serious or very serious.

Prior to the Amendment Regulations, the prescribed provisions only included certain provisions of the AMLRs. However, Schedule 1 now includes prescribed provisions from an extensive list of laws, regulations and rules, including the following laws:

- Banks and Trust Companies Law (2020 Revision);
- Companies Management Law (2020 Revision);
- Directors Registration and Licensing Law (2020 Revision);
- Insurance Law (2020 Revision);
- Mutual Funds Law (2020 Revision);
- Private Funds Law, 2020;
- Private Trust Companies Regulations (2020 Revision); and
- Securities Investment Business Law (2020 Revision).

## 18. Data protection and COVID-19 – new guidance issued

Additional guidance was released on 6 April 2020 in relation to the impact of COVID-19 on data protection under the Cayman Islands Data Protection Law, 2017 (the DPL).

The guidance confirms that the Cayman Islands Ombudsman will take a pragmatic and commercial approach if, for example, the requirements of the DPL cannot be adhered to due to delays caused by the pandemic.

In addition, the Ombudsman has provided guidance as to the reporting and collection of specific health data and what data protection issues may arise when using videoconferencing and collaboration apps to work from home.

A copy of the guidance note can be found [here](#).

## 19. Extension of special economic zone designation

By Order gazetted on 30 April 2020, the designation of six locations within the Cayman Islands (five in Grand Cayman and one in Cayman Brac) as spaces for the special economic zone known as Cayman Enterprise City was extended to **31 October 2021** (from 30 April 2020).

## 20. Amendment of Retail Mutual Fund Regulations

The Retail Mutual Funds (Japan) (Amendment) Regulations, 2020 were gazetted in late June 2020. The changes introduced by these Regulations reflect the removal of the AMLSG list of jurisdictions considered to have equivalent AML/CFT legislation to that of the Cayman Islands.

A new 'equivalent legislation jurisdiction' definition will instead be used.

## 21. Amendment of Banks and Trust Companies Law

The Banks and Trust Companies (Amendment) Law, 2020 was adopted in May 2020. The main change effected was to amend CIMA's enforcement powers to allow the imposition of administrative fines in relation to a breach of the Banks and Trust Companies Law (2020 Revision).

## 22. Amendment of Trusts Law

The Trusts (Amendment) Law, 2020 was adopted in May 2020. The main changes effected by this amendment legislation were to:

- permit the Customs and Border Control Service and any 'competent authority' as defined under the Proceeds of Crime Law (2020 Revision) (as well as CIMA, the TIA, the Financial Reporting Unit and the Financial Crimes Unit of the RCIPS) to request information on trusts from the Registrar of Trusts; and
- provide that where an entity that is authorised to request information from the Registrar of Trusts (as described above) has reasonable grounds to believe that a person who is a trustee, or any other person exercising ultimate effective control of a trust, is acting in contravention of certain AML/anti-corruption and transparency laws, the entity may direct that person to provide such information in relation to the trust or its activities as may be required. A person who knowingly fails to comply commits an offence and is liable on summary conviction to a fine of CI\$50,000 (US\$60,976) and, if the offence is a continuing one, to a fine of CI\$10,000 (US\$12,195) per day (up to a maximum of CI\$50,000 (US\$60,976)).

## 23. Amendment of Trade and Business Licensing Law

The Trade and Business Licensing (Amendment) Law, 2019 was gazetted in June 2020.

The main changes effected to the Trade and Business Licensing Law (2019 Revision) were to:

- introduce provisions relating to designated non-financial business and professions (DNFBPs); and
- reflect an enhanced focus on compliance with AML, CFT and counter proliferation financing laws; and
- include Dealers in Precious Metals and Stones as a specific category of trade, together with the applicable fees.