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# Regulatory Update

Cayman Islands – Q3 2022

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# Quick Fire Updates

## 1. Beneficial ownership update – Unexpired passport information required

On 10 June 2022, the Ministry of Financial Services and Commerce issued a media release notifying industry of the publication of three sets of regulations confirming that beneficial ownership information under the Cayman regime must include details of the individual's unexpired and valid passport. Accordingly, this aspect of beneficial owner information must be updated on an ongoing basis.

The relevant regulations are listed below and were introduced with immediate effect on **10 June 2022**:

- the Companies (Amendment of section 254) Regulations, 2022;
- the Limited Liability Companies (Amendment of section 80) Regulations, 2022; and
- the Limited Liability Partnership (Amendment of section 61) Regulations, 2022.

The Press Release also confirmed that the Competent Authority will issue updated guidance on this point soon.

## 2. 2022 Mourant Regulatory Conference

On 4 May 2022, Mourant hosted its eleventh annual Regulatory Conference at the Ritz Carlton, Grand Cayman. The conference, which was hosted by Mourant partner, Sara Galletly, included an opening message from the Minister of Financial Services and Commerce, a discussion on AML/CFT policies and procedures with the Cayman Islands Monetary Authority (CIMA) and a fireside chat on the Common Reporting Standard (CRS) and economic substance with the Department for International Tax Cooperation (DITC), followed by a panel discussion with the Financial Reporting Authority (FRA) on financial sanctions.

See our [Top 'Take-Aways'](#) for more information.

## 3. Cayman sanctions update

On 7 April 2022, the Cayman Islands Government issued a [Statement](#) informing industry that it had established a joint task force to coordinate, identify and implement policy amendments to implement Russia sanctions.

The task force is chaired by the Director of the FRA and is comprised of representatives from key Cayman Islands agencies, including the following:

- Office of the Governor
- Ministry of Financial Services and Commerce
- CIMA
- FRA
- General Registry, Cayman Islands
- Cayman Islands Bureau of Financial Investigations
- Cabinet Office.

The same Statement noted that, since the commencement of the Russian invasion of the Ukraine in February 2022, more than 800 asset freezes had been imposed in the Cayman Islands, with over

400 Compliance Reporting Forms submitted, and confirmed the freezing of assets with an estimated value of US\$7.3 billion.

## 4. Update on Cayman's FATF/EU status

On 7 June 2022, the Ministry of Financial Services issued a media release informing industry that the Minister of Financial Services and Commerce, the Hon. André Ebanks, had received confirmation from the European Commission's Directorate-General for Financial Services and Capital Markets Union (DG FISMA) that the EU does not require additional AML/CFT measures to be adopted to remove Cayman from the EU's AML/CFT list, over and above those required by the Financial Actions Task Force (FATF) action plan. Accordingly, once the FATF removes the Cayman Islands from its list of jurisdiction under increased monitoring, the EU will initiate steps to delist the Cayman Islands.

The FATF action plan initially comprised three action points, of which the following two action points are outstanding

- The imposition of adequate and effective sanctions in relation to the filing of inaccurate, incomplete and outdated beneficial ownership information.
- Demonstrating the prosecution of money laundering cases and that such prosecutions result in the application of dissuasive and effective sanctions.

The Cayman Islands will report on the status of these two outstanding points at the FATF's October 2022 plenary meeting.

## 5. CIMA Circular on ESG and sustainable investing

CIMA issued a [Supervisory Issues and Information Circular](#) on 13 April 2022 recognising the growth of environmental, social and governance (ESG) considerations, or 'sustainable investing', as an investment strategy. The Circular notes the need for ESG and sustainable funds, and their investors, to understand the risks and issues arising out of an ESG focus, stating that the persons charged with governance of regulated funds should:

- have clear roles and responsibilities, and start establishing procedures, to identify, manage and mitigate the risks arising out of the fund's investment strategy; and
- ensure clear and ongoing disclosures in the context of their reporting requirements.

The Circular confirms that CIMA will assess the information that it receives, as well as look at other jurisdictions, in order to formulate a suitable regulatory and supervisory approach for climate-related and other ESG-related risks.

## 6. CRS and ES enforcement commencing

The Cayman Islands Ministry of Financial Services issued a press release on 14 April 2022 advising industry that the Tax Information Authority would commence enforcement actions in the coming weeks in relation to the CRS and Economic Substance (ES) frameworks.

Please see our [Update](#) on the CRS and ES Enforcement Guidelines for more information.

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## 7. CRS/FATCA filing deadlines & support

The deadline for filing CRS and FATCA reports relating to the 2021 financial year in the Cayman Islands is **31 July 2022**.

In addition, the deadline for the Cayman Islands CRS Compliance Form for the 2021 financial year is **15 September 2022**.

If you need support with your reporting, Mourant Governance Services can assist. Email [louise.somers@mourant.com](mailto:louise.somers@mourant.com)

## 8. VASP registration FAQs updated

CIMA issued a [Notice](#) on 2 May 2022 confirming that the virtual asset service provider (VASP) registration FAQs have been updated in order to reduce delays in the registration process due to incomplete or low quality applications.

The VASP FAQs can be found on CIMA's website [here](#).

## 9. Supervisory circular – Testing of reliance on third party CDD

On 19 May 2022, CIMA released a [Supervisory Circular](#) relating to the requirement to test the simplified due diligence arrangements permitted under the Anti-Money Laundering Regulations (2020 Revision) (as amended, the **AMLRs**).

As provided by the Guidance Notes<sup>1</sup>, testing of eligible introducer (EI) relationships must be conducted on a random and periodic basis to ensure that identification and verification (IDV) information is produced by the EI upon demand and without undue delay. Records are also required to be kept in respect of such testing.

With nominee/agent arrangements, a written assurance letter must be provided confirming, amongst other things, that the nominee entity will also provide IDV information upon request and without delay.

## 10. Supervisory circular – Review of TCSP sanctions compliance

CIMA issued a [Supervisory Circular](#) on 17 June 2022 setting out the findings from a review of trust and corporate services providers' (TCSPs) compliance with Regulations 5 & 12 of the AMLRs undertaken in 2021, together with the controls required to address the deficiencies identified in relation to targeted financial sanctions (TFS) policies and procedures.

For the review, CIMA considered the results of inspections of 27 TCSPs involving 567 random customer files, assessing the levels of TFS compliance both at customer onboarding and during the course of the business relationship. Whilst the majority of TCSPs examined had adequate policies and procedures for TFS screening at onboarding (63%) and ongoing monitoring (89%), the following weaknesses in implementation were highlighted:

- **Effectiveness of implementation:** 74% of TCSPs had at least one client file with weaknesses around TFS screening or clients or related parties.
- **TFS screening not conducted for at least one client or associated party:** 15% of the files reviewed showed instances where at least one client or associated party was not screened for TFS at onboarding, on a periodic basis thereafter or whenever there was an update of the TFS list by HM Treasury.
- **TFS screening not performed at client onboarding:** 14% of the files reviewed showed instances where TFS screening was not completed until after the business relationship was already established.
- **TFS screening not documented on client files:** 11% of the files reviewed had at least one client where the records of TFS screening completed were not documented and retained in the client file.
- **TFS screening not conducted through ongoing monitoring or periodic review:** 5% of the files showed instances where TFS screening did not take place during ongoing monitoring/periodic client file reviews or whenever there was an update of the TFS list.
- **Periodic reviews were not conducted in a timely manner in accordance with the clients' business and risk profile:** 14% of the files reviewed showed instances where the TFS review conducted did not accord with the clients' business and risk profile, meaning that the data was not kept current.
- **TFS screening results not documented:** 1% of the client files lacked documentation to show how the TCSP treated positive and/or false positive hits flagged by their TFS screening IT systems.

The Circular sets out CIMA's conclusion and recommendations, highlighting:

- the need to understand the TFS obligations under the AMLRs;
- the need to document all actions taken to comply with TFS, as well as the rationale for each action;
- the importance of providing TFS-related training to staff; and
- the requirement that TCSPs review and assess their AML/CFT compliance programmes on an ongoing basis to ensure that they meet the prescribed standards and are commensurate with the nature, size and complexity of the business.

All regulated entities should note that failure to comply with provisions of the AMLRs and Guidance Notes may result in CIMA taking action, including enforcement action which may include the imposition of an administrative fine.

## 11. The Anchor – May 2022 edition

A new edition of [The Anchor](#), CIMA's AML/CFT newsletter, was released in May. The areas focussed on in the newsletter include the following:

- *Targeted financial sanctions:* Given the recent sanctions escalation, the newsletter highlights the importance of having strong sanctions compliance procedures which

<sup>1</sup> The Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands (5 June 2020) (the **Guidance Notes**), Part II, Section 5.E.18.

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enable quick responses to the rapid pace of change in this complex area.

- **National risk assessment (NRA)**: The Cayman Islands recently published a new **2021 National Risk Assessment** which, amongst other things, provides sectoral risk assessments in relation to multiple regulated financial service sectors. The Guidance Notes require that the money laundering, terrorist financing and proliferation financing threats and risks identified within the NRA be taken into consideration by Cayman financial service providers when conducting their own risk assessments.<sup>2</sup>
- **VASPS and the 'Travel Rule'**: The Anchor provides a reminder that the 'Travel Rule' will come into force in relation to VASPS on **1 July 2022**, providing background and noting practical challenges such as the 'sunrise issue' (ie, when the travel rule is not uniformly implemented across all jurisdictions). See our [Update](#) for more information.

## 12. Insurance (Amendment) Bill, 2022

The Insurance (Amendment) Act, 2022 was gazetted on 28 June 2022 and came immediately into force. The Act amends the Insurance Act, 2010 (as amended) to provide for capital redemption contracts or 'funding agreements'.

Under the Act, **capital redemption contracts** are defined as contracts under which an insurer may:

- (a) receive and accumulate sums of money; and
- (b) pay a sum or sums of money or render money's worth,

on dates and in amounts that are not contingent on human life or against risks of the person insured.

Such capital redemption contracts are now included within the definitions of 'contract of insurance', 'contract of reinsurance' and 'long term business' under the Insurance Act, and within the provisions relating to long term business accounts.

The Ministry of Financial Services and Commerce issued a [Media Release](#) regarding the Insurance (Amendment) Bill on 7 June 2022, with a further [Media Release](#) upon enactment on 28 June 2022.

## 13. Private Capital Perspectives: Podcast series

Mourant has launched a Private Capital Perspectives podcast series, designed to give a platform to some of the leading voices in the global private capital industry.

The first episode is an interview with Ranesh Ramanathan, a partner in the Boston office of Kirkland & Ellis. Ranesh focuses his practice on debt finance, distressed/special situations, alternative investments and credit fund transactions. He is also Co-Chair of Kirkland's Diversity & Inclusion Committee. Previously General Counsel at Bain, Ranesh talks about a range of interesting topics include remote working, distressed credit markets through the pandemic, the outlook for ESG and the ongoing challenges of diversity and inclusion.

Please [click here](#) to listen.

## 14. Mourant Guides and Updates

Mourant has uploaded some new Updates and Guides to our website, as follows:

- [Cayman Islands trusts](#)
- [Fund finance; Sanctions](#)
- [Another take on winding-up exempted limited partnerships in the Cayman Islands](#)
- [Chambers Acquisition Finance Global Practice Guide - Trends and Developments, Cayman Islands](#)
- [Repackaging transactions - Key advantages to Cayman Islands orphan trust SPVs](#)
- [Outsourcing Cayman Islands AML/CFT compliance obligations](#)
- [Chambers Corporate M&A 2022 Global Practice Guide - Trends and Developments, Cayman Islands](#)

<sup>2</sup> The Guidance Notes, Part II, Section 1.1.4.

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