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Regulatory Update

Cayman Islands – Q1 2023

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Quick Fire Updates

1. January 2023 deadlines

Please note the following January 2023 deadlines:

15 January	Payment of Cayman Islands Monetary Authority (CIMA) annual fees. Directors registered or licensed under the Directors Registration and Licensing Act, 2014 must file their annual declaration and pay their annual fee. Registered Persons under the Securities Investment Business Act (2020 Revision) must file their annual declaration
31 January	Payment of annual fees to the General Registry. Filing of economic substance notification with the General Registry.

As 15 January 2023 falls on a Sunday, we advise that all filings are made and fees are paid by 13 January.

Failure to comply with the above deadlines can result in penalties. Please contact us if you require assistance.

2. Key filing dates - 2023

As we enter a new year, Mourant have prepared a useful [Reminder](#) regarding the key 2023 filing dates and requirements. Please contact us for guidance on any filing or compliance obligations.

3. Amendments to the Limited Liability Companies Act

The Limited Liability Companies (Amendment) Act, 2022 was gazetted and came into force on 19 October 2022. The Act made the following amendments to the Limited Liability Companies Act (2021 Revision) (the **LLC Act**):

- Section 5 was amended to clarify that the registration statement of a limited liability company (**LLC**) should include the names and addresses of the *initial* members of the LLC.
- Section 6 was amended to require the register of members, to include information on the interest held by each member of the LLC, including:
 - each group or class, if any, of LLC interest held by the member;
 - whether the LLC interest held by the member confers the right to vote on any matter which is to be voted on;
 - whether the member has the right to vote as a consequence of membership of any group of members or otherwise; and
 - whether such right is conditional.
- Section 61 was amended to introduce a requirement that, where the register of members of an LLC is kept at a place other than the registered office, the LLC must maintain the information contained in the register at its registered office.

These amendments are aimed at aligning the LLC Act with the Companies Act (2022 Revision).

4. Ombudsman releases new Personal Data Breach Notification Form

The Cayman Islands Ombudsman released a new [online Personal Data Breach Notification Form](#) in mid-November 2022. This form may be used by data processors and controllers to report personal data breaches directly to the Ombudsman via the Ombudsman's website.

Prior to the introduction of this form, notification of a personal data breach was emailed to the Ombudsman using a [fillable PDF notification form](#). This method of notification is still available, if preferred.

For more information regarding the notification of data breaches, please see our [Cybersecurity and data breaches Update](#).

5. Cayman Islands FATF update

The Financial Action Task Force (**FATF**) determined at the plenary meeting held in Paris on 21 October 2022 to keep the Cayman Islands on its list of jurisdictions with AML/CFT deficiencies (also known as the FATF 'grey-list'), despite noting that the Cayman Islands is now compliant with 62 out of the 63 recommended actions required in order to improve the Cayman Islands' AML/CFT regime.

The Cayman Islands Ministry of Financial Services & Commerce (the **Ministry**) released a [Media Release](#) on 21 October noting that the final recommended action relates to money laundering investigations and prosecutions, which the FATF has encouraged the jurisdiction to complete by February 2023.

6. Updated list of approved stock exchanges

An updated list of approved stock exchanges was adopted by the CIMA on 24 October 2022 and can be found [here](#).

7. CIMA Regulatory Policies on complaints gazetted

The following Regulatory Policies on complaints were gazetted in early November 2022:

- [Regulatory Policy on Complaints Against the Authority](#); and
- [Regulatory Policy on Complaints Against Licensees, Registrants and Other Supervised Entities](#).

Complaints against the Authority

The objective of the Regulatory Policy on Complaints against the Authority policy is to promote CIMA's transparency and fairness in performing its functions and managing its affairs.

In summary, the policy:

- establishes the main criteria and approach for submitting complaints against CIMA;
- provides that complaints can be made relating to CIMA's operations, supervisory and regulatory functions, disputes of contractual and/or commercial nature and employees; and
- provides details about the criteria for filing a complaint, how to direct a complaint and the complaints handling process.

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Complaints against Licensees, Registrants and Other Supervised Entities

In summary, the Regulatory Policy on Complaints against Licensees, Registrants and Other Supervised Entities:

- establishes the criteria for submission of complaints against supervised entities to CIMA and a process by which such complaints will be dealt;
- provides that such a complaint should first be raised with the supervised entity (as CIMA expects all supervised entities to have satisfactory systems and controls in place to enable them to deal with customer complaints in a thorough and prompt manner);
- notes that CIMA will request proof from the complainant that they have taken reasonable steps to resolve the complaint with the supervised entity before considering any complaint;
- provides that CIMA will investigate where the complainant is of the view that the supervised entity has not observed good conduct of business or may have breached any of the regulatory acts;
- clarifies that where the matter is of a criminal nature, such as suspected theft or fraud, complainants should consider reporting the matter directly to the Royal Cayman Islands Police Services (RCIPS) or, in circumstances of suspected money laundering, financing of terrorism or proliferation financing, the Financial Crime Investigation Unit of the RCIPS;
- provides that where the complaint relates to improper conduct by the complainant's employer, the Whistleblower Protection Act, 2015 and data protection considerations should be taken into account before submitting a complaint; and
- clarifies that CIMA is not empowered to arbitrate in complaints about supervised entities, or to compel an entity to pay compensation to a customer in relation to an individual complaint.

8. Cayman Islands leadership at OECD global forum

The Cayman Islands has been appointed to the following bodies of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (the **Global Forum**) for the period of 1 January 2023 to 31 December 2025:

- Member of the Steering Group; and
- Vice Chair of the Peer Review Group (reappointment).

These appointments were announced at the OECD Global Forum Plenary in Seville, Spain in November 2022. See the Ministry's [Media Release](#) for more information.

9. Cayman Islands given highest possible rating by OECD for effectiveness of AEOI regime

The Global Forum's report containing the results of the [Peer Review of the Automatic Exchange of Financial Account Information 2022 for the Cayman Islands](#) was released on 9 November 2022.

This report analyses the legal frameworks put in place to implement the automatic exchange of information (**AEOI**)

standard and the effectiveness of the implementation of the AEOI standard in practice. The Cayman Islands was given the highest possible ranking on both assessments.

10. Cayman Islands Government considers EU Court of Justice ruling on beneficial ownership registers

On 30 November 2022, the Ministry released a [Statement](#) regarding the EU Court of Justice's (**ECJ's**) recent judgment regarding public beneficial ownership registers in Luxembourg.

The ECJ ruling followed the Ministry's preparation of draft legislation which proposes (amongst other things):

- to consolidate the beneficial ownership regime into one statute; and
- a prospective approach regarding the introduction of public beneficial ownership registers in the Cayman Islands, in line with the requirements of the United Kingdom.

The ECJ ruling will be reviewed by the Ministry to determine any implications with respect to the public beneficial ownership proposal previously drafted.

11. Cayman engagement with the EU Parliament FISC Committee

Minister for Financial Services and Commerce, the Hon. André Ebanks attended a meeting of the EU Parliament's Subcommittee on Tax Matters (**FISC**) to discuss how the Cayman Islands cooperates on tax matters globally.

See the Ministry's [Media Release](#) for more information.

12. Latest edition of The Anchor

CIMA issued the October 2022 issue of its AML/CFT newsletter, [The Anchor](#), in the last quarter. Below is a brief overview of the topics covered.

Financial sanctions evasion typologies: Russian Elites and enablers

The newsletter refers to the 'Red Alert' notice issued by HM Treasury's Office of Financial Sanctions Implementation, the UK National Crime Agency and others relating to financial sanctions evasion typologies by Russian elites and enablers in July 2022.

The purpose of the Red Alert was to provide information on common techniques used by designated persons and their enablers to evade financial sanctions.

Revision of FATF Recommendation 25 – Beneficial ownership of legal arrangements

The newsletter summarises the areas considered by the FATF in its current review of Recommendation 25 on measurements to prevent the misuse of legal arrangements for money laundering or terrorist financing.

DAOs – AML/CFT risks

The newsletter provides some guidance regarding the AML/CFT risks associated with decentralised autonomous organisations

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(DAOs) and certain questions which should be incorporated into a risk assessment.

13. Circular to SIBA licensees and registered persons

On 3 January 2023, CIMA issued a circular to all securities investment business licensees and registered persons in relation to CIMA's expectation that these entities undertake regular internal audits of their controls and infrastructure to ensure that they are suitably robust in consideration of the nature and scale of their operations.

The circular requests a schedule of the internal audit reviews planned for the period of 1 January 2023 to 31 December 2023 and provides that CIMA expects to receive any issued internal audit report within three months of completion.

14. Mourant Guides and Updates

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

- [Cybersecurity and data breaches in the Cayman Islands](#)
- [Cayman Islands Key Filing Dates 2023](#)
- [Take privates by way of a scheme of arrangement in the Cayman Islands](#)
- [Cayman Islands probate and letters of administration](#)

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