



GUIDE

The Cayman Islands administrative fines regime

Last reviewed: March 2021

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Introduction

Part VIA of the Monetary Authority Act (2020 Revision) (as amended, the **Monetary Authority Act**) allows the Cayman Islands Monetary Authority (**CIMA**) to impose administrative fines upon individuals and entities licensed and regulated in the Cayman Islands. CIMA may impose such administrative fines in respect of breaches¹ of certain provisions as set out in Schedule 1 of the Monetary Authority (Administrative Fines) Regulations, 2019 (as amended, the **Regulations**). Schedule 1 lists the '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.

The list in Schedule 1 contains prescribed provisions from an extensive number of laws, regulations and rules, including the following laws:

- Anti-Money Laundering Regulations (2020 Revision);
- Banks and Trust Companies Act (2021 Revision);
- Companies Management Act (2021 Revision);
- Directors Registration and Licensing Act, 2014;
- Insurance Act, 2010;
- Mutual Funds Act (2021 Revision);
- Private Funds Act (2021 Revision);
- Private Trust Companies Regulations (2013 Revision);
- Securities Investment Business Act (2020 Revision); and
- Virtual Asset (Service Providers) Act, 2020.

The [Appendix](#) to this update contains the full list of the laws, regulations and rules in Schedule 1.

Whilst this guide details the administrative fines which may be imposed by CIMA, it should be noted that the Registrar of Companies and Limited Liability Companies has the power to impose administrative fines in relation to the beneficial ownership provisions under Part XVIIIB of the Companies Act (2021 Revision) and Part 10A of the Limited Liability Companies Act (2021 Revision). Please see our guide on [Cayman's beneficial ownership regime](#) for further details.

Categories of administrative fines

Administrative fines may be imposed in relation to three categories of breach (minor, serious and very serious), each with the amount of fines and limitation period as follows:

Breach	Fine(s)	Limitation period ²
Minor	'Initial' fixed fine of US\$6,100. CIMA will also have a discretion to impose one or more continuing fines of US\$6,100 each, up to a cumulative cap of US\$24,390 for a single minor breach	6 months
Serious	A single fine up to a maximum of US\$60,980 for individuals or US\$121,955 for corporate bodies	2 years
Very serious	A single fine up to a maximum of US\$121,955 for individuals or US\$1,219,515 for corporate bodies	2 years

¹ **Breach** is defined broadly, including a contravention, allowing or not allowing a prescribed state of affairs to exist and engaging or not engaging in prescribed conduct.

² These limitation periods run from the date on which CIMA became aware of the commission of the relevant breach. CIMA will be deemed to have become aware of a breach when it first received information from which the breach can reasonably be inferred.

CIMA has a discretion with serious and very serious breaches in deciding whether to impose a fine and the amount of any fine.

Application to regulated funds

As the Mutual Funds Act and the Private Funds Act are now listed in Schedule 1 to the Regulations, regulated funds fall within the scope of the administrative fine regime.

Private funds

Notably, the following provisions of the Private Funds Act are categorised as very serious offences:

- failure of an operator of a private fund to ensure compliance with the Private Funds Act;
- carrying on or attempting to carry on business as a private fund in or from the Cayman Islands without a valid registration application;
- accepting capital contributions from investors in respect of investments while the private fund is not registered;
- a person, other than a private fund, representing in any way that the person is carrying on or attempting to carry on business in or from the Cayman Islands as a private fund;
- failure of a private fund to comply with an instruction by CIMA to (a) have the private fund's accounts audited by a CIMA approved auditor and submitted to CIMA; or (b) provide a one-off or periodic report to CIMA on certain matters;
- failure of a private fund to comply with a request by CIMA to provide such documents, statements or other information in respect of a private fund as CIMA may reasonably require;
- failure to provide information to CIMA in connection with an alleged breach or providing information which the person knows to be false or misleading;
- failure of a person appointed by CIMA to advise on, or assume control of, the proper conduct of the fund's affairs to supply the relevant information and reports; and
- hindering CIMA in the exercise of its powers under the Private Funds Act.

These administrative fines are in addition to any penalties under the Private Funds Act. For example, a private fund carrying on or attempting to carry on business in or from the Cayman Islands without a valid registration application commits an offence and is liable on conviction to a fine of US\$122,000. In addition, under the Private Funds Act, operators of private funds are liable on conviction to a fine of US\$24,390 for carrying on business as a private fund contrary to the Private Funds Act.

Mutual funds

Similarly, the following provisions of the Mutual Funds Act are categorised as very serious offences:

- carrying on or attempting to carry on business as a mutual fund in or from the Cayman Islands without a valid licence or registration (including the requirement to file a current offering document with CIMA);
- failure of the operator of a mutual fund to ensure that the mutual fund complies with any conditions contained in its licence;
- supplying information in a licence application that the person knows or should reasonably know is false or misleading;
- a person, other than a regulated mutual fund, representing in any way that the person is carrying on or attempting to carry on business in or from the Cayman Islands as a mutual fund;
- acting or carrying on business as a mutual fund administrator without being authorised;
- a licensed mutual fund administrator changing its principal office or the body corporate or any individual acting as its agent without first giving notice to CIMA;
- failure of a licensed mutual fund administrator to comply with any conditions contained in its licence;
- knowingly supplying false or misleading information in a mutual fund administrator's licence application;

- failure of a licensed mutual fund administrator to give CIMA the prescribed details and fee in respect of a mutual fund immediately upon starting to provide the principal office of a regulated mutual fund;
- failure of a mutual fund administrator to immediately give CIMA written notice of knowledge or belief that a regulated mutual fund:
 - is or is likely to become unable to meet its obligations as they fall due;
 - is carrying on business otherwise than in accordance with the Mutual Funds Act or any other law; or
 - is carrying on business in a manner that is or is likely to be prejudicial to investors or creditors of the mutual fund;
- holding oneself out as a mutual fund administrator without a licence
- knowingly giving false or misleading information in relation to alleged breaches of sections 4 and 10 of the Mutual Funds Act; and
- failure of a person appointed in respect of a mutual fund, regulated EU Connected Fund or licensed mutual fund administrator to:
 - supply CIMA with requested information in respect of the mutual fund or the EU Connected Fund;
 - prepare and supply to CIMA a report on the affairs of the mutual fund or the EU Connected Fund, making recommendations where appropriate;
 - supply to CIMA such other information, reports and recommendations as specified after the report;

As above, these administrative fines are in addition to any penalties under the Mutual Funds Act. For example, operators of mutual funds are liable on conviction to a fine of US\$120,000 for carrying on business as a mutual fund contrary to the Mutual Funds Act.

Application to directors

Directors licensed or registered in the Cayman Islands pursuant to the Director Registration and Licensing Act, 2014 (DRLA) (whether or not they are resident in the Cayman Islands) fall within the scope of the administrative fine regime.

The following provisions of the DRLA are categorised as very serious offences:

- acting, being appointed to act or continuing to act as an individual director of a covered entity³ without being registered with CIMA under the DRLA;
- serving as a director for any covered entity where CIMA has refused to register the applicant;
- being, proposing to be or continuing to be a professional director without holding a valid licence;
- serving as a professional director for any covered entity where CIMA has refused to grant a licence;
- failure of a professional director to comply with the terms of their licence;
- acting as a corporate director without being licensed;
- failure of the subsidiary of (a) a corporate director, (b) the holder of a mutual funds administrator licence or (c) the holder of a companies management licence, that is appointed to act as a director of a covered entity to be licensed (unless that subsidiary holds a mutual funds administrators licence or a companies management licence); and
- knowingly or recklessly providing any information or explanation, or making any statement, to CIMA which is false or misleading.

See our guide on [The director registration and licensing regime in the Cayman Islands](#) for further details.

³ 'covered entity' means (i) mutual funds regulated by CIMA under the Mutual Funds Act or (ii) companies registered as 'registered persons' with CIMA under the Securities Investment Business Act.

Application to securities investment business

'Relevant persons' engaging in 'securities investment business' either in or from the Cayman Islands pursuant to the Securities Investment Business Act (2020 Revision) (as amended, **SIBA**) are now within the scope of the administrative fine regime. A relevant person may be a Cayman Islands company or partnership, foreign company or partnership registered in the Cayman Islands, or any natural person who has established a place of business in the Cayman Islands. Such relevant persons must apply to CIMA for a licence or registration under SIBA unless one of a limited number of exemptions applies. See our guide on [Registered persons under Securities Investment Business Act](#).

The following provisions of SIBA are categorised as very serious offences:

- failure of a licensee or registered person to comply with a direction to cease and desist or to take remedial action required by CIMA;
- carrying on or purporting to carry on securities investment business without a licence or registration;
- failure to file the necessary registration application and pay the prescribed fee;
- failure of a licensee or registered person to change its name within 3 months of a CIMA request to do so;
- failure of a licensee or a registered person to separately account for the funds and property of each client and for their own funds and property
- failure of a licensee to have its accounts audited annually by a recognised auditor;
- knowingly or recklessly providing a false or misleading information to CIMA; and
- failure of a licensee or a registered person to comply with a written notice from CIMA.

Criteria and procedure

The Regulations set out both the criteria and procedure for imposing an administrative fine.

Criteria

In determining whether to impose a discretionary fine (ie, a fine relating to a serious or very serious breach) and the amount of any such fine, CIMA must consider all relevant factors, including certain prescribed criteria stipulated by the Regulations and four principles set out in the Monetary Authority Act.

- **Principles:** CIMA must have regard to the following principles, in the following order of importance:
 - First, the need to promote and maintain a sound financial system in the Cayman Islands.
 - Second, the need to ensure that licensees under the regulatory laws, and their connected persons, (a) do not gain from any breaches of the prescribed provisions and (b) disgorge any such gains;
 - Third, the need to punish intentional, reckless or inappropriately negligent breaches of the prescribed provisions.
 - Fourth, the need to deter breaches of the prescribed provisions.
- **Prescribed criteria:** The Regulations set out a long list of both subjective and objective discretionary fine criteria, including:
 - the nature and seriousness of the breach;
 - the degree of the party's inadvertence, intent or negligence in committing the breach;
 - the duration of the breach, if it is continuing;
 - the measures or precautions that a reasonable person acting prudently would have taken to prevent the breach;
 - evidence of intent to conceal a breach;
 - the party's conduct upon becoming aware of the breach; and
 - any damage, harm or loss caused by the breach, whether financial or otherwise.

In determining the amount of a fine, CIMA will also take into account any mitigating or aggravating circumstances, resources and ability to pay and any adverse impact upon third parties due to the imposition of an administrative fine.

Fine Process

Prior to imposing a fine, CIMA must issue a breach notice informing the relevant party of its intention to impose a fine and stipulating (amongst other things) the nature of the specified breach and the amount of the proposed fine. The breach notice must also state:

- a period (the **reply period**) in which the addressee may reply to CIMA, which must not be less than 30 days after the date of the breach notice; and/or
- that, in relation to a fixed fine (ie, a fine relating to a minor breach), the party may give CIMA a rectification notice⁴.

If CIMA receives a reply or rectification notice, it is under a duty to reconsider the circumstances of the breach and whether to impose a fine or exercise any discretion.

If, at the end of a reply period specified in a breach notice:

- no reply has been given;
- a reply has been given and CIMA has complied with its duty to consider the response and any matters raised therein; or
- a rectification notice has been given and CIMA has complied with its duty to consider the rectification notice and whether the breach was rectified to its satisfaction within 30 days of the breach notice,

then, if the breach notice related to a fixed fine and CIMA is not satisfied that the breach was rectified within 30 days of issue of the breach notice, CIMA is required to impose the relevant fine.

Alternatively, if the breach notice related to a discretionary fine, CIMA may exercise its discretion under the Monetary Authority Act to impose a fine and to set the amount of any fine. If CIMA decides to impose a fine, it must issue a fine notice in accordance with the Regulations. CIMA must also provide notice of a decision not to impose a fine within 15 days of the end of the relevant reply period.

Electronic notices

The Regulations provide that CIMA may issue notices electronically by sending them to the email address of:

- the party itself;
- if the party is a body corporate, any of its directors or members, or its registered office provider; or
- if the party is a partnership, any of its partners (excluding limited partners of limited partnerships) or its registered office provider.

Review of fixed fines

A party which has received a fine notice relating to a fixed fine may apply to CIMA for an internal review of the decision by CIMA's Management Committee. Any such application must be made within 30 days of receipt of the fine notice. The Management Committee is required to:

- consider the application within 20 days of receipt; and
- provide notice of its decision within 10 days after making a decision on the application.

⁴ A notice to CIMA from a party that has received a breach notice, stating that the breach was rectified within 30 days after receipt of the breach notice.

Appeal against discretionary fines

A party which has received a fine notice relating to a discretionary fine may apply to the Grand Court of the Cayman Islands for leave to appeal against the original decision within 30 days after receiving the notice⁵. The Grand Court may only grant leave to appeal if:

- the party has grounds for seeking a judicial review of the decision; or
- the decision was made with a lack of proportionality or was not rational.

CIMA may apply to the Grand Court for an order that the appellant provide sufficient security for costs and for a stay of the appeal proceedings until security is provided.

After hearing an appeal, the Grand Court may (a) affirm, set aside or vary the original decision or (b) set aside the original decision and remit the matter back to CIMA for its reconsideration, subject to such directions as the Grand Court considers fit.

Interest on fines

A fine becomes a debt owed to the Crown on the day that the fine was required to be paid under the fine notice. Interest of 5% per annum accrues daily as compound interest whilst all or any part of a fine is outstanding, and is a debt owed to the Crown.

Fines in addition to other enforcement powers

CIMA may impose administrative fines in addition to any exercise of CIMA's enforcement powers under the Monetary Authority Act, any regulatory law or the AML Regulations.

In addition, an administrative fine may be imposed in respect of a breach which is not an offence under Cayman Islands law. However, where a breach is also an offence, an administrative fine for that breach is not limited by the imposition of a penalty in respect of the offence.

Contacts

A full list of contacts specialising in regulatory law in the Cayman Islands can be found [here](#).

⁵ A person who entered into a discount agreement with CIMA relating to a breach may not apply for leave to appeal where the fine imposed is no more than the amount agreed to.

Appendix - Laws, regulations and rules within the scope of CIMA's administrative fine regime

Laws

- Anti-Money Laundering Regulations (2020 Revision)
- Banks and Trust Companies Act (2021 Revision)
- Building Societies Act (2020 Revision)
- Companies Management Act (2021 Revision)
- Cooperative Societies Act (2020 Revision)
- Development Bank Act (2018 Revision)
- Directors Registration and Licensing Act, 2014
- Insurance Act, 2010
- Monetary Authority Act (2020 Revision)
- Money Services Act (2020 Revision)
- Mutual Funds Act (2021 Revision)
- Private Funds Act (2021 Revision)
- Securities Investment Business Act (2020 Revision)
- Virtual Asset (Service Providers) Act, 2020

Regulations

- Insurance (Capital and Solvency) (Class A Insurers) Regulations, 2012
- Insurance (Capital and Solvency) (Class B, C, and D Insurers) Regulations (2018 Revision)
- Mutual Funds (Annual Returns) Regulations (2021 Revision)
- Mutual Funds (EU Connected Fund (Alternative Investment Fund Managers Directive)) Regulations, 2016
- Private Trust Companies Regulations (2013 Revision)
- Securities Investment Business (Conduct of Business) Regulations, 2003
- Securities Investment Business (EU Connected Fund (Alternative Investment Fund Managers Directive)) Regulations, 2016
- Securities Investment Business (Financial Requirements and Standards) Regulations, 2003
- Securities Investment Business (Registration and Deregistration) Regulations, 2019

Rules

- Liquidity Risk Management Rules and Guidelines
- Leverage Ratio Rules and Guidelines
- Rule on Cancellation of a Licence or Certificate of Registration of Regulated Mutual Funds
- Rule on the Segregation of Assets - Licensed Funds
- Rule on the Contents of Offering Documents - Licensed Funds
- Rule on the Calculation of Asset Values – Licensed Funds
- Rule on Internal Controls – General for all Licensees
- Rule on Management of Credit Risk and Problem Assets
- Rule on Market Conduct – Insurers, Agents and Brokers
- Rule on Corporate Governance for Insurers
- Rule on Interest Rate Risk Management for Banks
- Rule on Country and Transfer Risk Management for Banks
- Rule on Large Exposures and Credit Risk Concentration for Banks
- Rule on Operational Risk Management for Banks
- Rules on Investments, Securities and Derivatives Risk Management for Banks

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2021 MOURANT OZANNES ALL RIGHTS RESERVED