

# Regulatory Update Q4



Welcome to Athena's quarterly industry update!

It is our pleasure to present this final summary for the last quarter of 2020 of the latest legal and regulatory developments in the Cayman Islands affecting the alternative investment industry. The environment is changing more rapidly than ever in these extraordinary times and, whilst there are many specific updates available, we wanted to let you have an outline of the key changes to ensure that you are aware of the major developments during Q4.

Many of the jurisdictional enhancements made by the Cayman Islands over the last several years have been designed to keep up with the increased globalization of the international finance community. As a leading offshore jurisdiction, Cayman has been an early adopter of many global initiatives to meet the global standards set by the Organisation for Economic Co-operation and Development and the EU in relation to tax transparency and the inclusive framework on base erosion and profit shifting.

Below is look at the Q4 regulatory developments in case you missed them:

*Disclaimer: The information provided does not, and is not intended to, constitute legal advice, instead, the information herein is for general informational purposes only. Please contact your usual Cayman counsel for specific legal advice on any of the matters outlined below.*

## THE CAYMAN ISLANDS IS REMOVED FROM THE EU'S ANNEX I LIST OF NON-COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

On 6 October 2020, the European Union (EU) confirmed Cayman's removal from the EU list of non-cooperative jurisdictions for tax purposes<sup>i</sup>, following its adoption of changes to its regulatory framework to address EU economic substance requirements by introducing the requirement for registration and thus regulatory oversight of investment funds operating in or from the Cayman Islands. For more information on this please see Allison Nolan's article published in Bloomberg [here](#).

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The Cayman Islands government, the Cayman Islands Monetary Authority (CIMA) and key industry stakeholders worked tirelessly since February of 2020, and amidst management of the COVID-19 global pandemic, in developing and implementing an appropriate regulatory framework to address EU concerns. The results of this collaborative effort include: (i) a best-in-class regulatory framework for investment funds; (ii) enhanced investor protection measures for investors in private funds; and (iii) the removal from the EU list of non-cooperative jurisdictions.

## **MONETARY AUTHORITY ADMIN FINES AMENDMENT REGULATIONS PUBLISHED**

The Monetary Authority (Administrative Fines) (Amendment) (No.2) Regulations, 2020 (Amendment Regulations) were published on 28 October 2020. The Amendment Regulations add administrative fines for additional sections of the Development Bank Act (2018 Revision), the Companies Management Act (as amended) and the Cooperative Societies Act (as amended) and includes categories of breaches for various laws, regulations and rules that were previously omitted. In summary, the Amendment Regulations expand CIMA's enforcement powers and provide CIMA with effective and dissuasive sanctions that could be applied where a person breaches the Monetary Authority Act, any other regulatory law or the Anti-Money Laundering Regulations.

## **VIRTUAL ASSET SERVICE PROVIDERS REGULATORY FRAMEWORK**

On 30 October 2020, CIMA advised that the Virtual Service Providers (VASP) regulatory framework was being commenced in two phases. Phase one, which began on 31 October 2020, focuses on anti-money laundering (AML) and countering the financing of terrorism (CFT) compliance, supervision and enforcement. Persons engaged in or wishing to engage in virtual asset services must be registered with CIMA under the VASP Act. Persons engaged in or wishing to engage in virtual asset services currently holding a licence granted by CIMA under another regulatory law must notify CIMA under the VASP Act.

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Provisions of the VASP Act which relate to enforcement, penalties or offences commenced on 31 January 2021. Persons who have not registered or notified CIMA by the Authority's application deadline, but who are engaging in virtual asset services on and after 31 January 2021 will be subject to penalties and other enforcement measures.

Registration/notification is via the VASP Application Form on CIMA's REEFS online platform. CIMA will publish a date by which applications have to be received in order to be considered prior to 31 January 2021.

Phase two, which is expected to begin in June 2021, will bring into force the remaining provisions of the VASP Act, including the licensing requirement for virtual asset custodians and trading platform operators, the sandbox licensing regime and other elements of the VASP Act.

## **CIMA PUBLISHES STATEMENT OF GUIDANCE ON: NON-FUND ARRANGEMENTS**

On 18 November 2020, CIMA issued a Statement of Guidance: Non- Fund Arrangements to provide guidance on the assessment criteria to be applied in determining whether certain arrangements meet the definition of a "non-fund arrangement" under the Private Funds Act, 2020 (PFL), and are therefore exempt from the requirement to register as a private fund under the PFL. A copy of the Statement of Guidance can be found [here](#).

## **CIMA PUBLISHES FAQ UPDATE RELATING TO LIMITED INVESTOR FUNDS – 2020 AUDIT REQUIREMENTS**

On 30 November 2020, CIMA issued an update to the FAQ on Limited Investors Funds and the 2020 audit requirements, specifically:

- What are the audit requirements for a Limited Investor Fund?
- Will an audit for a Limited Investor Fund be required for 2020?

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

## CAYMAN LIMITED LIABILITY PARTNERSHIP REGIME

In 2017, the Cayman Islands passed the Limited Liability Partnership Act, 2017 allowing for the registration of a new type of partnership vehicle, a limited liability partnership. A key feature of this vehicle is that, unlike a general or exempted limited partnership, it is established as an entity with separate legal personality, which is separate and apart from its partners and offers limited liability status to all of its partners.

Following its enactment, the Cayman Islands government has worked on various operational aspects of the new regime to bring it in line with recent legislative enhancements made to the Companies Act and the Limited Liability Companies legislation around beneficial ownership, information required on annual filings and the administrative fines regime. The various amendments to the Limited Liability Partnership Act for 2018, 2019 and 2020 (including the Limited Liability Partnership (Amendment) No.2 Act, 2020 (Commencement Order) came into effect as of 1 December 2020.

## CAYMAN 'LAWS' TO 'ACTS'

Effective 4 December 2020, as a result of changes to the Cayman Islands Constitution, the Legislative Assembly became a Parliament and the Cayman Islands Citation of Acts of Parliament Law 2020 came into force, which means that all Cayman Islands laws past and future must now be referred to as 'Acts'.

## NON-COMPLIANT DIRECTORS – DIRECTORS REGISTRATION AND LICENSING ACT, 2014 (AS AMENDED)

On 14 December 2020, CIMA issued a warning notice providing a list of registered directors who are non-compliant with the Directors Registration and Licensing Act, 2014 (as amended) (DRLA) and that CIMA proposes to cancel the listed director registrations under its authority under the DRLA.

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## DATA PROTECTION ACT – DATA BREACH REMINDER

On 24 December 2020, the Office of the Ombudsman issued a reminder that it is a requirement under section 16 of the Data Protection Act, 2017 (DPL) that organisations who have experienced a personal data breach must notify the Ombudsman of that breach without undue delay, and no later than 5 days after they become aware, or should have been aware, of the breach. All affected data subjects must also be notified of the breach within the same time period. Failure to notify is an offence under the DPL and can lead to a fine of up to CI\$100k (approx. US\$125k).

**If you would like further details or to discuss any of the updates herein, please contact us below:**

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<sup>i</sup> <https://www.consilium.europa.eu/en/press/press-releases/2020/10/06/eu-list-of-non-cooperative-jurisdictions-for-tax-purposes-anguilla-and-barbados-added-cayman-islands-and-oman-removed/>