

## Cayman Islands administrative fines regime

Insights - 25/07/2023

The Cayman Islands recently expanded its administrative fines regime, empowering the Cayman Islands Monetary Authority (**CIMA**) to impose administrative fines on partnerships and other unincorporated associations. In this briefing, we provide a brief overview of the Cayman Islands administrative fines regime (**Regime**), including who is in scope, the level of the fines that the Regime provides for, and the categories of breaches for which such fines may be imposed.

### Background

The Regime came into force in December 2017 and granted CIMA the power, pursuant to the Monetary Authority Act (Revised) (**MAA**) and Monetary Authority (Administrative Fines) Regulations (Revised) (**Administrative Fines Regulations**), to impose administrative fines on persons (entities and individuals) for breaches of the Anti-Money Laundering Regulations (Revised) (**AMLRs**).

The Regime was subsequently extended in 2020 to grant CIMA the power to impose administrative fines for breaches of certain prescribed provisions of the regulatory acts listed in the MAA (the **Regulatory Acts**) and certain associated regulations and rules.

The Regime has recently been further expanded, pursuant to the Monetary Authority (Amendment) Act 2023 (**Amendment Act**), which amongst other things, empowers CIMA to impose administrative fines on partnerships (including limited liability partnerships and exempted limited partnerships) and other unincorporated associations.

This briefing provides a brief overview of the Regime, including:

- who CIMA can impose an administrative fine on
- the categories of breaches for which an administrative fine may be imposed

- the amounts of the prescribed fines
- limitation periods
- the procedure for imposing an administrative fine,

under the Regime.

## Who can CIMA impose an administrative fine on?

An individual, a body corporate, a partnership, a limited liability partnership, an exempted limited partnership, an unincorporated association or any other person that breaches a prescribed provision (i.e. a provision identified as such under the Administrative Fines Regulations) of a Regulatory Act (or associated regulations and rules), the AMLRs or the MAA can be fined by CIMA.

The Regulatory Acts include the following:

- Banks and Trust Companies Act (Revised)
- Companies Management Act (Revised)
- Directors Registration and Licensing Act (Revised) (**DRLA**)
- Insurance Act (Revised)
- Money Services Act (Revised)
- Mutual Funds Act (Revised)
- Private Funds Act (Revised)
- Securities Investment Business Act (Revised)
- Virtual Asset (Service Providers) Act (Revised)

In addition, CIMA may impose an administrative fine on a director, manager, secretary, other similar officer, or person purporting to act in such capacity (**Officer**) of a body corporate, where the body corporate commits a breach that was committed with the consent or connivance of, or is attributable to the neglect on the part of, such Officer. CIMA has similar fining powers under the Regime in respect of partners or persons involved in the management or control of partnerships or other unincorporated associations.

Any administrative fine(s) imposed under the Regime may be imposed in addition to any (if any) penalties which are imposed for offences under a relevant Regulatory Act itself and reflect a separate regulatory enforcement mechanism to criminal proceedings.

## Categories of breaches

Breaches are categorised under the Regime as minor, serious or very serious, as set out in Schedule 1 to the Administrative Fines Regulations.

By way of example, accepting capital contributions from investors while a private fund is not registered, carrying on business as a private or mutual fund in or from the Cayman Islands without a valid licence or registration, and/or acting as an individual director of a covered entity without being registered with CIMA under the DRLA are each categorised as a very serious offence under the Regime.

## Amounts of administrative fines

The amount of the administrative fine prescribed under the Regime varies depending on the categorisation of the relevant breach, as shown in the following table:

Type of breach	Amount of administrative fine
<b>Minor</b>	A fixed fine of CI\$5,000, plus one or more continuing fines of CI\$5,000 for each fine already imposed until one of the following occurs: <ul style="list-style-type: none"><li>- the breach stops or is remedied</li><li>- payment of the initial fine and all continuing fines imposed for the breach or</li><li>- the total of the initial fine and all continuing fines for the breach reaches CI\$20,000.</li></ul>
<b>Serious</b>	A single discretionary fine of up to CI\$50,000 for an individual or CI\$100,000 for a body corporate, partnership or unincorporated association.
<b>Very Serious</b>	A single discretionary fine of up to CI\$100,000 for an individual or CI\$1,000,000 for a body corporate, a partnership or an unincorporated association.

## Limitation periods

The MAA: (i) precludes CIMA from imposing an administrative fine after the expiration of two years (or six months in the case of a minor breach) from the date on which it became aware of the commission of the relevant breach; and (ii) provides that CIMA will be deemed to have become aware of a given breach when it first received information from which such breach could reasonably be inferred.

## Criteria to be taken into account

In deciding whether to impose a discretionary fine under the Regime, and the amount of any such fine, CIMA must consider all relevant factors, including the below principles as set out in the MAA and criteria prescribed by the Administrative Fines Regulations

The MAA states that, when deciding whether or not to impose a fine and the amount of a fine under the Regime, CIMA must have regard to the following principles, in the following order of importance:

1. the need to promote and maintain a sound financial system in the Cayman Islands
2. the need to ensure that persons regulated under the Regulatory Acts, and their connected persons
  - a. do not gain from breaching any prescribed provisions and
  - b. disgorge all such gains
3. the need to punish any intentional, reckless or inappropriately negligent breaches of any prescribed provisions
4. the need to deter breaches of any prescribed provisions

The Administrative Fines Regulations also set out a list of general criteria, which CIMA must consider when exercising its discretion with respect to fines under the Regime, including:

- the nature and the seriousness of the relevant breach
- the degree of the relevant party's inadvertence, intent or negligence in committing the relevant breach
- the duration of the relevant breach, if it is continuing
- the measures or precautions that the relevant party took to prevent the relevant breach

- evidence of intent by the relevant party to conceal the relevant breach or mislead CIMA
- the relevant party's conduct after becoming aware of the relevant breach, for example, how quickly the relevant party brought the relevant breach to CIMA's attention
- if CIMA has imposed a fine on the relevant party in similar circumstances to the relevant breach, the amount of that fine

There are also additional criteria which CIMA must consider under and in accordance with the Administrative Fines Regulations in relation to fine amounts under the Regime, including:

- any mitigating circumstances, the resources and ability of the relevant party to pay and any financial hardship of the relevant party
- any potential adverse financial consequences on third parties of imposing a fine in the amount proposed
- any circumstance that aggravates, or may tend to aggravate, the relevant breach or its effects

The Administrative Fines Regulations also expressly permit (but do not require) CIMA to negotiate with a party to attempt to reach a discount agreement in relation to an administrative fine under the Regime, even if CIMA has not issued breach notice. If a party enters into such a discount agreement, it cannot then seek leave to appeal against the imposition of the agreed administrative fine.

## **Procedure for imposing an administrative fine**

The Administrative Fines Regulations set out the procedure which must be followed in order for CIMA to issue an administrative fine under the Regime.

By way of outline, in order for CIMA to impose an administrative fine, it must first issue a breach notice to the relevant person alleged to be in breach of a prescribed provision under the Administrative Fines Regulations. The breach notice must state certain things, including the nature of the specified breach and the amount of the proposed fine, and must provide for a reply period of at least 30 days within which the recipient may reply to CIMA. For a minor breach, the breach notice must also state that the party may give CIMA a rectification notice (i.e. a notice confirming that the breach has been rectified).

CIMA has a duty to consider any response given within a prescribed reply period and reconsider whether it still believes a breach has occurred and, in the case of a discretionary fine, consider the matters raised in the relevant response to the extent that they are relevant to exercising fine discretions under the Regime.

Where a rectification notice is given within a prescribed reply period (in relation to a breach notice for a minor breach/fixed fine) and CIMA is satisfied that the relevant breach was rectified within 30 days of the issuance of the relevant breach notice, CIMA shall refrain from issuing a fine notice or imposing an administrative fine. Otherwise, if CIMA still believes that a minor breach has occurred and is not satisfied that such breach was rectified within the required period, CIMA is required to impose the relevant fixed fine.

Where CIMA imposes a fine, it must issue a fine notice in accordance with the Administrative Fines Regulations. Where CIMA decides to not impose a fine, it is required to notify the relevant party within 15 days after the end of the relevant reply period.

## **Review and appeal rights**

A party which has received a fine notice relating to a fixed fine issued under the Administrative Fines Regulations may apply to CIMA – within 30 days of receipt of the relevant fine notice – for an internal review of the relevant decision by CIMA's Management Committee (as established under the MAA).

A party which has received a fine notice relating to a discretionary fine may apply to the Grand Court of the Cayman Islands – within 30 days after receipt of the relevant fine notice – for leave to appeal against the relevant original decision. The Grand Court may only grant leave to appeal under the Administrative Fines Regulations if:

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

## **Other types of administrative fines**

This briefing focusses on administrative fines that may be imposed by CIMA under the MAA and the Administrative Fines Regulations. It is worth noting that other Cayman Islands authorities, including the Cayman Islands Tax Information Authority and Registrar of Companies, also have powers to impose administrative fines under and in accordance with the Cayman Islands economic substance, common reporting standard (CRS), and beneficial ownership regimes.

## **How can Ogier assist?**

Ogier's Regulatory and Dispute Resolution teams have extensive experience advising funds and other regulated entities in the Cayman Islands on the Administrative Fines Regulations.

For further information on this please reach out to the authors, or to your usual Ogier contact.

## About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

## Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

## Meet the Author



[Martin Byers](#)

Partner

[Cayman Islands](#)

E: [martin.byers@ogier.com](mailto:martin.byers@ogier.com)

T: [+1 345 815 1899](tel:+13458151899)

## Related Services

[Corporate](#)

[Dispute Resolution](#)

[Investment Funds](#)

[Legal](#)

[Regulatory](#)

## Related Sectors

