



Action Required - CIMA Corporate Governance and Internal Controls Rule Update

Insights - 01/09/2023

As you may be aware, the Cayman Islands Monetary Authority (CIMA) has recently introduced a new Rule on Corporate Governance for Regulated Entities (Corporate Governance Rule) and a new Rule and Statement of Guidance on Internal Controls for Regulated Entities (Internal Controls Rule together with the Corporate Governance Rule, the Rules).

The Rules will come into effect on 14 October 2023 and apply to all entities regulated by CIMA in the Cayman Islands, including investment funds regulated under the Mutual Funds Act and Private Funds Act, as well as licensees and registered persons regulated by CIMA under the Securities Investment Business Act (each a Regulated Entity), and will require you to take action to ensure compliance.

The Corporate Governance Rule should be read in conjunction with the related CIMA Statement of Guidance on Corporate Governance (Corporate Governance SOG), which provides sector specific guidance on CIMA's minimum expectations for the sound and prudent governance of Regulated Entities: [advisory on the Corporate Governance Rule and related Corporate Governance SOG](#)

Ogier can assist with the recommended actions, to ensure that the specific requirements of the Rules are met for your relevant Regulated Entities.

Overview

It should be noted that the new Rules impact not only Regulated Entities established as companies, but also partnerships, unit trusts and LLCs. Accordingly, even if your Regulated Entities do not have a board of directors, it will still be necessary for the relevant governing body (ie the general partner / managing member / trustee, as appropriate) (Governing Body) to consider its approach to governance to ensure compliance.

The Corporate Governance Rule requires Regulated Entities to establish, implement and maintain

a corporate governance framework that is commensurate with the size, complexity, structure, nature of business and risk profile of their operations. Given this test, it will be necessary for the Governing Body to consider what is appropriate for the specific Regulated Entity in the circumstances. Factors to be considered will include the type of assets under management, number of investors, complexity of the structure, nature of investment strategy etc.

A key requirement of the Corporate Governance Rule is that a Governing Body should, at least annually, meet to review and approve certain elements of a Regulated Entity's corporate governance framework, including:

1. the composition and collective skill set, experience and expertise of the Governing Body;
2. the internal controls of the Regulated Entity, to ensure they are operating effectively and that any deficiencies are addressed; and
3. the implementation of risk assessment and risk management systems to ensure that all significant risks are being adequately measured, monitored and mitigated.

The Corporate Governance Rule also requires each member of a Governing Body to disclose all conflicts of interest to the whole Governing Body on at least an annual basis, via a written annual declaration (and for any changes to such declaration to be communicated throughout the year).

Practical next steps

Ogier can advise you on the practical steps required to ensure that there is an appropriate governance framework in place for your Regulated Entity(ies), one that will be sufficient to meet the requirements of the new Rules and related guidance.

Although we do not expect CIMA to undertake any form of outreach or enforcement immediately after the effective date (14 October 2023), we would note that as a technical matter, any breach of the Rules may lead to the imposition of a fine or a regulatory action being taken against a Regulated Entity pursuant to the exercise of its powers under the relevant regulatory acts.

As a starting point, it will be necessary for the Governing Body of every Regulated Entity to review the corporate governance framework of the Regulated Entities they operate and to ensure that they are familiar with and understand their obligations under, and implement practices that meet or exceed the requirements of, the Corporate Governance SOG - as well as all applicable provisions of the Rules prior to the 14 October 2023 effective date.

How can Ogier help to ensure current compliance?

(A) Corporate Governance Review - recommended to ensure compliance with the Rules

Option 1. Comprehensive Governance Review - Ogier to conduct a gap analysis for the Regulated Entity

To ensure that your Regulated Entity adopts an approach for corporate governance that is adequately tailored to the specific size, complexity, structure, nature of business and risk profile of its operations, we can undertake a detailed gap analysis of:

- the Regulated Entity's current corporate governance framework; and
- the Regulated Entity's existing policies and procedures for matters such as regulatory compliance, risk management, and conflicts of interest.

Following such a review, we can advise on any remedial documentation that may be required to address any shortcomings in approach (including, by way of example, the adoption of a corporate governance manual created specifically for regulated funds) as well as the approval arrangements for the Governing Body to formally adopt such additional items and evidence compliance with the Rules.

Option 2. Assisted Governance Review - Ogier to provide a review checklist for the Regulated Entity's internal review

Alternatively, should you prefer to undertake your own initial review, we can prepare a corporate governance review checklist which sets out the requirements of the Rules (together with some helpful CIMA/sector specific commentary) which may helpfully assist you in your review in advance of the 14 October 2023 effective date. If following your own review of the Regulated Entity's existing corporate governance and internal controls framework, you identify any gaps as against the new Rules, we can again advise you on any required amendments to your existing framework together with the approval arrangements for the Governing Body to formally adopt in order to evidence compliance.

(B) Compliance Manual (optional) - to ensure comprehensive compliance of all applicable regulatory requirements in the Cayman Islands (beyond corporate governance)

Although not technically required, you may find it convenient to put in place a manual which serves as a standalone document setting out the Regulated Entity's approach to all its ongoing Cayman regulatory requirements, including the Rules in terms of corporate governance and other aspects of the Cayman regulatory framework (such as AML/ FATCA/ CRS/ UBO/ data protection and economic substance).

How can Ogier assist with ongoing compliance?

After a Regulated Entity is in compliance following a corporate governance review (under (A) above), the Governing Body will need to ensure ongoing compliance going forward. As such, we

can assist with preparing a standard form of annual agenda (including governance review checklist) that we recommend should be reviewed, revised as appropriate and adopted by the Governing Body for use at meetings of the Governing Body going forward (on at least an annual basis).

Contact us

If you would like to discuss how Ogier can assist you on any of the above requirements, please reach out to your usual Ogier contacts or one of the contacts listed below.

About Ogier

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