

## Cayman Islands Funds and Regulatory Update October 2023

Newsletters - 30/10/2023

### Summary of recent and upcoming legal and regulatory developments

#### Cayman removed from FATF 'grey list'

The Financial Action Task Force (FATF) has confirmed that the Cayman Islands will be removed from its "grey list", recognising that the Cayman Islands has a robust and effective regime for anti-money laundering / counter-terrorist financing /

managing /  
countering  
the  
proliferation  
of weapons of  
mass  
destruction.

[CIMA rules and statements of guidance on corporate governance and internal controls](#)

The Cayman Islands Monetary Authority (CIMA) has issued a series of regulatory measures relating to corporate governance and internal controls for Cayman Islands regulated entities, including investment funds.

[Beneficial ownership regime update](#)

Following a period of consultation, the Cayman Islands legislature has published the Beneficial Ownership Transparency Bill, 2023 in contemplation

of certain changes to the Cayman Islands beneficial ownership regime.

[Advance planning to minimise 2024 fees for any terminating vehicles](#)

Cayman vehicles that are terminating can take a number of steps before the end of the calendar year to reduce or eliminate certain costs for 2024.

[Cayman Court dispenses with the Houldsworth rule](#)

Following the recent decision of the Cayman Court in *Re HQP Corporation Limited*, misled or defrauded shareholders may rank equally with creditors in liquidations of insolvent funds.

## Cayman removed from FATF 'grey list'

The FATF has confirmed that the Cayman Islands will be removed from its "grey list", effectively recognising that the Cayman Islands has a robust and effective regime for anti-money laundering, countering the financing of terrorism and countering the proliferation of weapons of mass destruction (AML/CFT/CPF).

On 25 February 2021, the FATF added the Cayman Islands to its list of jurisdictions under increased monitoring in the area of AML/CFT/CPF. This list (sometimes referred to as the FATF's "monitoring" or "grey" list) includes jurisdictions that are cooperating with the FATF and working to address deficiencies identified by the FATF in their AML/CFT/CPF regimes. An action plan (Action Plan) was put in place by the FATF to address the deficiencies that it had identified in Cayman's AML/CFT/CPF regime.

Further to the FATF plenary held in June 2023, the FATF determined that the Cayman Islands has substantially completed all of the items set out in the FATF's Action Plan and the jurisdiction required an on-site assessment in order for the FATF to verify that the implementation of the relevant AML/CFT/CPF reforms had begun and were being sustained.

The FATF's assessors have since visited the Cayman Islands in order to meet with local stakeholders and assess the implementation of the Action Plan, and have finalised their on-site inspection report on the effectiveness of, and technical compliance of, the Cayman Islands with the Action Plan.

The final on-site inspection report was presented at the FATF Plenary held on 23-27 October 2023, further to which the FATF has confirmed that the Cayman Islands will: (i) be removed from the FATF "grey list"; and (ii) will no longer be subject to increased AML/CFT/CPF monitoring.

Read this [statement from the Cayman Islands Ministry of Financial Services](#).

## Enhancement of the corporate governance framework for regulated entities

CIMA has published the following new regulatory measures which apply to funds regulated under the Mutual Funds Act (Revised) and the Private Funds Act (Revised):

- [Rule on Corporate Governance for Regulated Entities](#)
- [Rule and Statement of Guidance on Internal Controls for Regulated Entities](#)
- an updated [Statement of Guidance on Corporate Governance for Mutual Funds and Private Funds](#)

(together, the **Enhanced Measures**)

The Enhanced Measures require all regulated entities, including regulated investment funds, 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 and which addresses, at a minimum:

- objectives and strategies of the regulated fund
- structure and governance of the governing body (which, in the case of a regulated fund, means the board of directors of a company, the general partner of an exempted limited partnership, the manager of a limited liability company or the trustee of a unit trust)
- appropriate allocation of oversight and management responsibilities
- independence and objectivity
- collective duties of the governing body
- duties of individual directors of the governing body
- appointments and delegation of functions and responsibilities
- risk management and internal control systems
- conflicts of interest and code of conduct
- remuneration policy and practices
- reliable and transparent financial reporting
- transparency of communications
- duties of senior management

In addition, the Rule and Statement of Guidance on Internal Controls sets out general rules and guidelines for all regulated entities (including regulated funds) covering five components of internal control, namely: control environment, risk identification and assessment, control activities and segregation of duties, information and communication, and monitoring activities and correcting deficiencies in internal controls.

CIMA expressly recognises that regulated entities may outsource some business functions, delegating their duties for day-to-day management to service providers (as is typical in the context of a regulated fund) and may accordingly rely on their service providers' systems of internal controls for any such outsourced activities, provided that the governing body in each case is

satisfied and can demonstrate to CIMA that the applicable system of internal controls meets the requirements of the Rule and Statement of Guidance on Internal Controls.

We expect that many regulated funds should already be largely compliant with the Enhanced Measures. However, we advise operators of regulated funds to review their existing corporate governance framework with their Cayman legal counsel to consider the requirements of the Enhanced Measures, as there are certain nuanced requirements that may require specific attention, for example with respect to treatment of conflicts of interest, a code of conduct and meeting agendas.

In particular, the Enhanced Measures are likely to impact regulated funds that are structured as exempted limited partnerships, given there is now an express requirement that regulated funds must hold a meeting of the governing body, at least annually (including in the case of an exempted limited partnership with a non-Cayman entity serving as general partner).

A detailed discussion of the Enhanced Measures is contained in our client briefings:

[Update on CIMA Rules and Statements of Guidance](#)

[Enhancement of Cayman's corporate governance framework for regulated funds](#)

[Private Equity: Expanded Scope of Cayman's Corporate Governance Regime](#)

Please contact your usual Ogier representative to discuss how we may be able to assist with legal or fiduciary services, including through the provision of corporate secretarial services in relation to arrangements for the annual meeting of a regulated fund's governing body.

## **Beneficial ownership regime update - bill published**

The Beneficial Ownership Transparency Bill, 2023 (**BOR Bill**) has now been published and is expected to be presented to the Cayman Parliament before the end of this year, further to which detailed regulations and guidance are expected to be published.

The BOR Bill consolidates existing beneficial ownership legislation, seeks to enhance Cayman's transparency framework for legal persons and has been drafted to comply with Recommendation 24 of the FATF Recommendations, which relates to the provision of access to adequate, accurate and current beneficial ownership information.

The key points of change, which should be of note to Cayman Islands investment fund vehicles and Cayman Islands fund managers and advisors, are as follows:

all partnerships (including exempted limited partnerships typically used in investment fund structures) will be brought into scope of the beneficial ownership regime

the current exemptions under the existing beneficial ownership regime will be removed, including the exemption for funds registered under the Mutual Funds Act (Revised) or the Private Funds Act (Revised). Instead, funds registered under these Acts will be able to utilise an "alternative route to compliance", which will require them to provide their corporate services provider with the contact details of a licensed fund administrator or another contact person licensed or registered under a Cayman regulatory law and located within the Cayman Islands, to provide beneficial ownership information. Such contact person will be required to provide the competent authority with requested beneficial ownership information within 24 hours (or such other time required by the competent authority) of a request being made. This alternative route to compliance will not be available to unregistered funds or other unregistered vehicles within a registered fund's structure and these vehicles will likely be in scope and required to provide their corporate services provider with the required particulars

the definition of "beneficial owner" will be amended to more closely align with the definition used in Cayman's Anti-Money Laundering Regulations (noting that the relevant ownership and control percentage thresholds will remain at 25%)

entities that are registered with CIMA under the Securities Investment Business Act (Revised) or the Virtual Asset (Service Providers) Act (Revised) will no longer be exempt and will be required to establish and maintain a beneficial ownership register

Although there is no immediate action required until the BOR Bill is passed and comes into force, which is expected to be on a phased basis, investment funds clients are advised to prepare themselves to be compliant on a timely basis once it does come into force.

To the extent the BOR Bill is approved, any Cayman Islands vehicles that are out of scope of the current BOR legislation should be assessed to determine whether they will fall within scope of the new legislation. Currently in-scope entities should assess whether their existing beneficial ownership registers require any amendments in light of the revised definition of "beneficial owner". All in-scope entities should also familiarise themselves with their enhanced obligations under the BOR Bill.

The Cayman Islands Ministry of Financial Services has confirmed that further legal analysis and consultation between the Cayman Islands Government (and other Overseas Territories and Crown Dependencies) and the UK Government regarding the effect of a recent ruling handed down by the Court of Justice of the European Union (ECJ) will take place before any public access to Cayman's beneficial ownership register would be granted. In the relevant judgment, the ECJ ruled that unfettered public access to beneficial ownership registers in the European Union interfered with privacy and data protection rights protected under Articles 7 and 8 of the EU's Charter of Fundamental Rights. For more information on this, read [this statement from the Cayman Islands Ministry of Financial Services](#).

# Termination of Cayman vehicles - advance planning to minimise 2024 fees

Any Cayman vehicle that is considering termination should consider taking certain active steps before the end of the calendar year in order to reduce or eliminate certain annual fees and costs for 2024.

Please see our briefing [Terminating Cayman vehicles and minimising 2024 fees](#) for further information regarding termination options and for details of the assistance which Ogier and its affiliated corporate administration business, Ogier Global, can provide, including, acting as voluntary liquidator.

## Cayman Court dispenses with the Houldsworth rule

In the recent decision of *Re HQP Corporation Limited (Unreported, Doyle J, 7 July 2023)* the Grand Court of the Cayman Islands declined to follow the 19th century English House of Lords decision of *Houldsworth v City of Glasgow Bank (1880) 5 App Cas 317* and found that claims for misrepresentation were not only provable in the liquidation of a company but also rank equally with other unsecured claims. The decision has resolved long-running uncertainty around the status of claims of shareholders who are victims of misrepresentation or fraud, affording them equal status with ordinary creditors of a company in liquidation.

*Re HQP Corporation* implements an important change to the distribution methodology historically applied to Cayman funds. As a result of Doyle J's decision, unredeemed shareholders who can make out a misrepresentation claim rank equally to ordinary third-party creditors and may also rank ahead of, not just other unredeemed members, but also redemption creditors.

For a more detailed discussion see our client advisory: [Cayman Court dispenses with the Houldsworth rule](#).

For advice concerning any of the above matters, please contact your usual Ogier attorney or any of the contacts listed in this briefing.

### 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.

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