

Cayman Islands Funds and Regulatory Update April 2024

Newsletters - 03/04/2024

We are pleased to provide a round-up of recent Cayman Islands legal and regulatory developments.

In addition, we present an interactive [compliance calendar for Cayman funds](#) setting out key dates of note for 2024.

Summary of recent and upcoming legal and regulatory developments

Cayman removed from UK and EU AML list

Following the removal of the Cayman Islands from the Financial Action Task Force (FATF) "greylist", the United Kingdom and the European Union have removed the Cayman Islands from their respective lists of "high-risk third countries" for anti-money laundering / countering the financing of terrorism (AML / CFT) purposes.

Pending changes to the

Although not yet in force, the Cayman Islands legislature has approved the Beneficial Ownership Transparency Act, 2024 as a restatement and enhancement of the Cayman Islands beneficial

Cayman Islands ownership regime. The Ministry of

Cayman Islands beneficial ownership transparency regime ownership regime. The Ministry of Financial Services and Commerce of the Cayman Islands Government (MoFS) has also issued Technical Guidance for corporate services providers (CSPs) to support transition to a new reporting format under the new beneficial ownership regime.

Consultation on ELP Amendment Act The MoFS has circulated to industry, for consultation, a proposed bill intended to enhance the Exempted Limited Partnership Act (Revised).

Companies (Amendment) Act, 2024 The Companies (Amendment) Act, 2024 has been approved by the Cayman Islands legislature and, when brought into force, will introduce increased flexibility to certain provisions of the Companies Act (Revised) (**Companies Act**) which were industry-driven and are expected to be commercially beneficial.

Proceeds of Crime Act amendments Certain provisions of the Proceeds of Crime (Amendment) Act, 2023 have come into force.

Section 238 appraisals There have been a number of key developments in relation to Section 238 of the Companies Act which provides a mechanism by which shareholders can dissent from mergers and consolidations and have the fair value of their shares determined by the Grand Court of the Cayman Islands.

Cayman removed from UK and EU AML lists

As anticipated following the removal of the Cayman Islands from the FATF 'greylist' towards the end of last year, both of the UK and the EU have removed the Cayman Islands from their respective lists of "high-risk third countries" identified as having deficiencies in their AML / CFT regimes. The removal from the UK's list took effect on 8 January 2024 and from the EU's list took effect from 7 February 2024.

The Economic Secretary to the UK Treasury noted that the Cayman Islands has made significant progress to reform its AML / CFT regime and strengthen its anti-money laundering defences and competent authorities. The Cayman Islands is now one of a very small number of countries around the world to be compliant or largely compliant with all 40 of the FATF's recommendations.

Similarly, in its relevant delegated regulation, the EU recognised that the Cayman Islands has strengthened the effectiveness of its AML / CFT regime, having addressed all of the recommended points set out in the FATF's action plan for the jurisdiction.

For further information see our briefing: [Cayman Islands removed from EU AML List](#) and the releases from the MoFS: [Cayman Removed from UK High Risk List](#) and [Cayman Islands removed from the EU's AML List](#).

Pending changes to the Cayman Islands beneficial ownership transparency regime

The Cayman Islands legislature has approved the Beneficial Ownership Transparency Act, 2024 (BOT Act), as a restatement and enhancement of Cayman's beneficial ownership regime. Regulations and guidance notes to support the BOT Act have been in development throughout the first quarter of 2024. Implementation of the BOT Act is expected to commence, on a phased basis, from May 2024, with full implementation scheduled for the end of 2024 and compliance with the new beneficial ownership regime (under the BOT Act) to be required by 1 January 2025.

We will provide a further update as to specific actions to be taken once the details of the regulations and guidance notes have been finalised (further to industry consultation) noting that the MoFS has already issued, as of 15 March 2024, Technical Guidance for CSPs to support transition to a new (CSV file) beneficial ownership reporting format, along with an example CSV file detailing the required reporting data fields and a sample reporting (Excel) worksheet.

Although the BOT Act is not yet in force, the timeframe for implementation that has been communicated by the MoFS is such that all Cayman entities should begin assessing how the BOT Act will apply to them, as the new regime will be extended to some types of entity that were previously excluded (most notably, all partnerships, including exempted limited partnerships and

entities which are registered with the Cayman Islands Monetary Authority under a regulatory law such as the Securities Investment Business Act or the Virtual Asset (Service Providers) Act). A further significant change introduced under the BOT Act is the removal of the current exemptions under the existing beneficial ownership regime, including the exemption for funds registered under the Mutual Funds Act or the Private Funds Act. Instead, registered funds will be able to utilise an "alternative route to compliance" as set out in the BOT Act.

For further details of the changes and the next steps that funds clients should take to prepare themselves for compliance with the BOT Act, see our briefing: [Pending changes to the Cayman Islands Beneficial Ownership Transparency Regime](#).

Consultation on ELP Amendment Act

The MoFS has circulated to industry, a consultation on a proposed Exempted Limited Partnership (Amendment) Bill, 2024 (**ELP Amendment Bill**) intended to enhance the Exempted Limited Partnership Act (Revised) (**ELP Act**) to ensure the ELP Act continues to function for the benefit of legal practitioners and their clients alike.

The main proposals are as follows:

- Merger and consolidation provisions be extended to exempted limited partnerships (ELPs) as they are under Delaware law. The proposal is consistent with the approach used for exempted companies and limited liability companies (LLCs), under the Companies Act and the Limited Liability Companies Act, respectively. Contractual mergers and consolidations would be permitted without the need for court approval
- Introduction of provisions to permit an exempted company or LLC to convert to an ELP
- Certain clarificatory provisions relating to the nature of general partners and the ownership of the ELP's property
- Extension of the provisions of the Companies Act to permit a voluntary liquidation of the ELP to be brought under supervision of the Grand Court of the Cayman Islands

We will provide a further update once the ELP Amendment Bill has been published.

Companies (Amendment) Act, 2024

The Companies (Amendment) Act, 2024 (**CA Amendment Act**) has been approved by the Cayman Islands legislature and, when brought into force, will introduce increased flexibility to certain provisions of the Companies Act.

The key changes under the CA Amendment Act will permit the following actions which are

currently not permissible under the Companies Act:

- Reduction of share capital without the need for Court approval
- Foreign body corporate with limited liability and without a share capital may transfer into the Cayman Islands
- Re-registration of a Cayman Islands exempted company as an ordinary resident company
- Conversion of a (i) Cayman Islands LLC to an exempted company, and (ii) Cayman Islands foundation company to an exempted company

For further information, see our client briefing: [Guide to the Cayman Islands Companies \(Amendment\) Act 2024](#).

Proceeds of Crime Act amendments

Certain provisions of the Proceeds of Crime (Amendment) Act, 2023, (**POCA Amendment Act**) came into force on 31 January 2024. These provisions relate to reforms in the areas of intelligence gathering and investigation and ensure that the Proceeds of Crime Act (Revised) (**POCA**) conforms to international best practices.

Certain other provisions relating to the Suspicious Activity Reporting (**SAR**) framework set out under POCA, requiring the consent of the Financial Reporting Authority (**FRA**) to proceed with proposed actions once a SAR has been made to the FRA, have been introduced under the POCA Amendment Act but are not yet in force. We will provide a further update on this once further guidance on the proposed form of consent framework has been made available by the FRA and an implementation date has been confirmed.

Section 238 appraisals

There have been a number of developments in relation to Section 238 of the Companies Act which provides a mechanism by which shareholders can dissent from mergers and consolidations and have the fair value of their shares determined by the Grand Court of the Cayman Islands. For a discussion of the key recent decisions and developments that have shaped the Cayman Islands appraisal landscape and a look forward to what the future may hold for investors in this space, see our client briefing: [Section 238 roundup: recent developments in Cayman Islands appraisals](#).

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.

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



James Bergstrom

Partner

Cayman Islands

E: james.bergstrom@ogier.com

T: [+1 345 815 1855](tel:+13458151855)

Key Contacts



Tim Cone

Partner

Cayman Islands

E: tim.cone@ogier.com

T: [+1 345 815 1767](tel:+13458151767)



Angus Davison

Partner

Cayman Islands

E: angus.davison@ogier.com

T: [+1 345 815 1788](tel:+13458151788)



Joanne Huckle

Partner

Cayman Islands

E: joanne.huckle@ogier.com

T: [+1 345 815 1895](tel:+13458151895)



Bradley Kruger

Partner

Cayman Islands

E: bradley.kruger@ogier.com

T: +1 345 815 1877



Nick Rogers

Partner

Cayman Islands

E: nick.rogers@ogier.com

T: +1 345 815 1844



Justin Savage

Partner

Cayman Islands

E: justin.savage@ogier.com

T: +1 345 815 1816



Giorgio Subiotto

Partner

Cayman Islands

E: giorgio.subiotto@ogier.com

T: +1 345 815 1872



Emma Sutherland

Partner

Cayman Islands

E: emma.sutherland@ogier.com

T: +1 345 815 1789



Martin Byers

Partner

Cayman Islands

E: martin.byers@ogier.com

T: +1 345 815 1899



Megan Mcluskie

Senior Associate

Cayman Islands

E: megan.mcluskie@ogier.com

T: +1 345 815 1742



Richard Bennett

Partner

London

Hong Kong

E: richard.bennett@ogier.com

T: +44 20 3835 9494



Lin Han □□

Partner □□□

Hong Kong

E: lin.han@ogier.com

T: [+852 3656 6011](tel:+85236566011)



Kate Hodson □□.□□

Partner and Head of ESG (Legal) □□□

Hong Kong

E: kate.hodson@ogier.com

T: [+852 3656 6049](tel:+85236566049)



Nicholas Plowman □□□

Partner □□□

Hong Kong

E: nicholas.plowman@ogier.com

T: [+852 3656 6014](tel:+85236566014)

Related Services

Corporate and Fiduciary

Dispute Resolution

Investment Funds

Ogier Regulatory Consulting

Regulatory

Legal

Related Sectors

Funds Hub

Private Equity