

An update on the EU AML List and its impact on the Cayman Islands

Insights - 22/02/2022

Background

On 21 February 2022, the European Commission published an updated list of "high risk third countries", which will come into force on 13 March 2022 (**EU AML List**). As expected, the Cayman Islands has been included on that updated list. However, while this will impact a small subset of securitisation vehicles, it is generally anticipated that this update will have limited consequences for investors or clients using Cayman Islands structures.

The delegated regulation, which gives effect to the updates to the EU AML List, was subject to a one month scrutiny period during which neither the European Parliament nor the EU Council raised any objections. Accordingly, it can now be confirmed that the updated list will include the Cayman Islands when it comes into effect.

Why is Cayman being added to the EU AML List?

The EU Commission has identified two outstanding action points from the Financial Action Task Force (**FATF**) evaluation of the Cayman Islands, which saw Cayman initially added to the FATF's Monitoring List in February 2021.

The FATF has recently confirmed that the Cayman Islands is rated compliant or largely compliant with all of the FATF's 40 Recommendations and that the Cayman Islands has addressed all but those two outstanding action points, both of which pertain to enforcement and are being actively addressed. This places Cayman in an excellent position regarding potential removal from the FATF's Monitoring List at the next opportunity (likely to be in late 2022), which is expected to result in Cayman's subsequent removal from the EU AML List.

What is the impact of the listing?

The inclusion of the Cayman Islands on the EU AML List will require all EU financial services

providers to apply enhanced due diligence measures to relationships or transactions involving the Cayman Islands. A number of EU financial institutions already adopt this approach in practice, so this is not expected to have a material adverse impact.

Further, there is no immediate or direct impact to existing or new investment funds formed in the Cayman Islands, and the listing is not expected to have any consequences for investors or clients using Cayman Islands vehicles for fund structuring or fund finance arrangements. In particular, there is no impact on the ability of EU domiciled investors to invest in Cayman Islands investment funds, and such funds can continue to be marketed to EU investors under existing National Private Placement Regimes.

EU financial institutions will be prohibited from establishing tranching securitisation vehicles in the Cayman Islands, and it's expected that EU investors will be precluded from investing in securitisation deals with Cayman Islands issuers. This will affect new EU Risk Retention compliant transactions and those deals with EU based equity investors. The relevant EU Securitisation Regulation does not, however, expressly impose restrictions on EU investors who have invested in already existing deals or transactions that close prior to 13 March 2022.

There is, however, no impact on the significant majority of Cayman Islands securitisation vehicles where there is no EU nexus. It should also be noted that the EU Securitisation Regulation diverges from the UK equivalent legislation, referencing the FATF list of "high risk jurisdictions" instead, which does not (and is not anticipated to) include the Cayman Islands.

Please reach out to your usual Ogier contact, or one of the partners listed here, if you require further guidance in relation to the above.

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