

# Cayman Island Legal and Regulatory developments

Cases - 12/02/2020

The following highlights some recent and upcoming Cayman Island legal and regulatory developments which may be of interest.

## 7 FEBRUARY 2020

### Private Funds Law, 2020 and Mutual Funds (Amendment) Law, 2020

On 7 February 2020, the Cayman Islands Government enacted the Private Funds Law, 2020 (PF Law) and the Mutual Funds (Amendment) Law, 2020 (MFL Amendment). The legislation will require the registration with the Cayman Islands Monetary Authority of certain Cayman Islands closed ended funds as well as Cayman Islands funds that previously relied upon an exemption to registration that was available, under section 4(4) of the Mutual Funds Law (2020 Revision), to certain funds with 15 or fewer investors.

The PF Law provides a 6 month transitional period for private fund registration; both existing private funds and private funds launching within the transitional period will have until 7 August 2020 to register with CIMA.

The MFL Amendment provides a 6 month transitional period for funds in operation on 7 February 2020; such funds must be registered by 7 August 2020. However, the MFL Amendment provides that funds which commence business after 7 February 2020 will be required to comply with the new registration requirements from launch.

For a summary of the key features of the PF Law and the MFL Amendment please see Ogier's Client briefing.

## 5 FEBRUARY 2020

## Anti-Money Laundering (Amendment) Regulations, 2020 and associated Guidance Notes

The Anti-Money Laundering (Amendment) Regulations, 2020 were gazetted on 5 February 2020 (**AML Amended Regulations**). The principal amendment the Anti-Money Laundering Regulations (2020 Revision) was to the country risk assessment required to be carried out by a person carrying on relevant financial business in respect of a customer or applicant for business which amendment have a transition period of 6 months to come into effect. From 5 August 2020, the AML Amended Regulations remove the ability to rely upon the list of countries maintained by the Anti-Money Laundering Steering Group as having an equivalent AML regime to the Cayman Islands (**Equivalent Jurisdictions List**) and instead require the relevant jurisdiction to have been assessed by the person carrying out relevant financial business as having a low degree of risk of money laundering and terrorist financing. In addition the person carrying out relevant financial business shall evidence in writing the basis for its determination of the applicability of the assessment to the customer or applicant for business. In practice, Cayman Islands financial services providers (or service providers to Cayman Islands entities) will need to develop their own lists of risk-assessed countries (which are likely to be broadly similar to the existing Equivalent Jurisdictions List) in order for them to efficiently and effectively conduct the risk assessment process, and for their risk assessment documentation.

The AML Amended Regulations set out the criteria which should be taken into account when making a risk assessment of a country or geographic area.

Simultaneously with the release of the AML Amendment Regulations, CIMA published guidance notes for financial service providers amending the guidance notes issued on 13 December 2017 (**Guidance Notes (Amendment), February 2020**) The Guidance Notes (Amendment), February 2020 rename the original guidance notes to read **Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands of December 13, 2017**. These are now split into separate Parts as follows:

- (a) AML Guidance Notes (Amendments), February 2020 - Assessing Risk and Applying a Risk Based Approach
- (b) AML Guidance Notes (Amendments), February 2020 - Targeted Financial Sanctions
- (c) AML Guidance Notes (Amendments), February 2020 - Ongoing Monitoring
- (d) AML Guidance Notes (Amendments), February 2020 - Virtual Asset Service Providers

## 30 SEPTEMBER 2019

### Data Protection Law

On 30 September 2019, the Data Protection Law, 2017 (DP Law) came into force in the Cayman Islands. The Law introduces for the first time in the Cayman Islands a legislative framework on data

protection that will apply to almost all entities that are either established in the Cayman Islands (including investment funds) or are otherwise processing personal data in the Cayman Islands. The [Data Protection Regulations, 2018](#) came into effect concurrently with the DP Law.

1.2 All entities captured by the DP Law are required to take certain steps with respect to privacy and personal data. Entities which are already complying with the European GDPR Regulations are expected to be largely compliant with the provisions of the DP Law given that compliance with the former is set at a higher standard but may none the less be required to make amendments in order to comply with the DP Law.

1.3 Recommended actions required for Cayman Islands funds include (without limitation):

- (a) prepare and approve a new privacy notice, or amend the form of the current privacy notice, and circulate the same to existing investors;
- (b) revise the form of subscription documents for any investors subscribing into the fund;
- (c) ensure that contracts with service providers that process personal data on behalf of the fund comply with the DP Law, and negotiate and agree on amendments if necessary; and
- (d) ensure all amendments to fund documents are appropriately approved and authorised.

For further information our client briefings [New Cayman Data Protection Law – A guide for Cayman funds](#) and [Cayman Islands Data Protection Law: An Ogier Client Guide](#).

## **8 AUGUST 2019 (DEADLINE 7 FEBRUARY 2020)**

### **Amendments to the Companies Law, LLC Law, LLP Law and Trusts Law**

In response to gaps in the legislative framework identified by the Caribbean Financial Action Task Force in their Mutual Evaluation Report of the Cayman Islands regarding the availability and accuracy of information; interagency coordination and cooperation; international cooperation, amendments to the Companies Law (Revised), Limited Liability Companies Law (Revised) and the Limited Liability Partnerships Law (Revised) were enacted to strengthen the regime. These included the recording of voting rights in the register of members of Cayman companies, increased penalties for failing to maintain a beneficial ownership register and a reduction in the filing period for changes to the register of directors. These amendment laws each amend their respective principal laws to enact significant changes to certain corporate information required to be maintained, filed and publicly accessed.

At the same time, changes to Cayman Islands trusts were enacted by the [Trusts \(Amendment\) \(No. 2\) Law, 2019](#) that requires trustees, wherever based, if Cayman Islands law governed trusts to keep and maintain accurate and up to date records in relation to settlors, contributories, beneficiaries, protectors, enforcers, service providers and controlling persons as well as accounting records. It also empowers

the Registrar of Trusts to request information where a trustee or controlling person is acting in contravention of the Anti-Corruption Law (Revised), the Monetary Authority Law (Revised), the Proceeds of Crime Law (Revised) or the Tax Information Authority Law (Revised) and to share information on registered trusts with Regulatory Authorities (providing sanctions for failure to provide such Regulatory Authorities with required information) in similar fashion to the Registrar of Companies.

With effect from 1 October, 2019, an additional amendment of significance contained within the Companies (Amendment) Law, 2019, required the names of the current directors and alternate directors of all Cayman companies to be publicly available from the Registrar of the payment of a fee.

For further information on all of the above changes, please see our client briefing – Enhanced information for Cayman entities.

## **18 JUNE 2019 (DEADLINE 15 JANUARY 2020)**

### **Securities Investment Business (Amendment) Law, 2019**

On 18 June 2019 the Cayman Islands Government enacted the Securities Investment Business (Amendment) Law, 2019 (SIBL Law). The amendments affected all entities which are currently classified as 'Excluded Persons' under Cayman Islands Securities Investment Business Law (**SIBL**).

Under SIBL, Excluded Persons managing securities were required to re-register with CIMA as 'registered persons' by 15 January 2020. A registered person is required to have a minimum of two individual directors registered under the Directors Registration and Licensing Law, (Revised) or a corporate director licensed under that law

In addition, an amendment to the definition of 'fund management business' under the recently enacted International Tax Co-operation (Economic Substance) Law (Revised), means that any entity registering as a registered person under SIBL that is also conducting discretionary securities management will be regarded as carrying out 'fund management business' for the purposes of such law. Therefore such entities will be subject to the associated economic substance requirements under that law from the deadline for re-registration (15 January 2020).

## **Legislation expected to come into force in 2020**

### **Companies (Amendment) Law, 2020**

Following industry consultation, the proposed amendments to the beneficial ownership regime have been limited to the following to be introduced by the Companies (Amendment) Law, 2020 which was passed by the Legislative Assembly on 30 January, 2020 and expected to be gazetted shortly:

- (e) a beneficial owner for the purposes of the beneficial ownership provisions under the Companies Law (2020 Revision) shall include all holders of 25% or more of the shares and/or voting rights of

the company rather than in excess of 25% of such shares or voting rights; and

(f) a subsidiary for the purposes of the beneficial ownership provisions under the Companies Law (2020 Revision) shall include companies in which a legal entity as specified in the Companies Law (2020 Revision) holds 75% or more of the shares or voting rights in such company rather than in excess of 75% of such shares or voting rights.

### **FATCA/CRS Notification and Reporting dates and PPOC change**

The Cayman Islands Department for International Tax Cooperation (**DITC**) has advised at an industry briefing that the reporting date for Cayman financial institutions (**CFIs**) to complete their reporting obligations to the DTIC under the Foreign Account Tax Compliance Act (**FATCA**) and the Common Reporting Standard (**CRS**) will be extended going forward from the current 31 May reporting date to 31 July or later in any year following the relevant reporting year. A further amendment is expected to permit legal entities rather than individuals to be the principal point of contact. Amendments to the existing FATCA and CRS regulations are expected to be put in place during the first quarter of 2020 and an updated DTIC portal user guide is also anticipated.

### **International Tax Co-operation (Economic Substance) Law (Revised)**

Amendments to the International Tax Co-operation (Economic Substance Law (Revised) (**ES Law**) have been passed by the Legislative Assembly and are expected to be published shortly. These include:

(a) Annual notification provision to be made applicable to all entities.

(b) Provisions for the monitoring and verification of any outsourcing of core income generating activities. Advisers who propose to provide outsourcing will be required to register with the DITC. Relevant Entities (as defined in the ES Law) relying on outsourcing will be required to submit details of the outsourcer through the DTIC portal. The DITC will then verify with outsourcer as it is important for the DITC to have an effective mechanism to control outsourcing.

(c) Penalties for late filing will be detailed.

(d) Clarification of exchange of information relating to those entities claiming to be tax resident outside the jurisdiction. An entity that would otherwise be in-scope for ES but claiming tax exemption for tax residency outside Cayman, will be subject to exchange of information.

(e) Anti-avoidance provision will be removed from the draft bill which was previously published and will not be contained in the enactment of the amendment law.

## **Other items which may be of interest**

## Recent developments in Dispute Resolution in the Cayman Islands

The past year has seen an ever widening variety of litigation in the Cayman Islands, with large contentious cases including commercial litigation, restructuring and insolvency, trusts, regulatory issues, professional negligence cases (both for plaintiff and defendant) and proceeds of crime cases (for institution and for customer) and other contentious disputes. In addition, Cayman is also seeing the continuation of disputed valuation cases in connection with the squeeze-out of minority shareholders of Cayman companies – usually to facilitate a company’s subsequent public offering in China. For a summary of litigation trends in the Cayman Islands, please see [our client advisory](#).

### Anti-Bartlett clauses

A recent decision of the Hong Kong Court of Final Appeal (*Zhang Hong Li v DBS Bank (Hong Kong) Limited*) has confirmed that Anti-Bartlett clauses effectively exempt trustees from any liability for losses incurred in transactions by a trust's underlying investment companies, unless they become aware of actual dishonesty. This has provided a welcome degree of certainty on the construction of anti-Bartlett clauses in common law courts. For further discussion of the decision, please see our client briefing [Anti-Bartlett clauses – normal service resumed](#).

### About Ogier

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

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