

## Cayman Islands Funds and Regulatory Update: Q3 2022

Newsletters - 14/10/2022

The following briefing provides a round-up of the Cayman legal and regulatory developments during the third quarter of 2022 that may be of interest to funds clients. We are pleased to note that there is nothing critical or requiring immediate action at this time.

### Summary of recent legal and regulatory developments

#### Updated regulatory procedures for the deregistration of Cayman Islands regulated funds

Following consultation with industry, the Cayman Islands Monetary Authority (CIMA) has issued new regulatory procedures for Cayman Islands regulated funds regarding their deregistration with CIMA, either at the end of the life of the fund or in certain limited circumstances where their regulatory status may have changed.

### CIMA consultation on corporate governance

CIMA has issued a consultation draft of proposed rules to enhance corporate governance requirements for regulated entities, including investment funds, in the Cayman Islands. The intention is to adopt relevant corporate governance elements from the existing corporate governance framework and make enhancements as needed based on a review of international standards, jurisdictional comparison, and regulatory/supervisory needs.

### Protecting the name of your fund as a trade mark

Fund names may become valuable commercial assets when they are successfully registered as trade marks. Without trade mark protection, rights against third parties who may use and/or register a similar or identical fund name as a trade mark, may be limited. Formation of a fund vehicle does not ensure that the

owner can exclusively use the fund name. For more information, read our briefing: [Why do you need to protect the name of your fund as a trade mark?](#)

### [UK Register of Overseas Entities now in force](#)

Certain overseas entities owning UK property, including Cayman registered entities such as property funds or private funds holding UK property, will need to register in the UK to provide details of the beneficial owners of the UK property under the UK's recently enacted Crime (Transparency and Enforcement) Act 2022.

### [Cayman introduces reforms to its restructuring regime](#)

On 31 August 2022 the Cayman Islands brought into force the much-anticipated reforms to its restructuring regime which will facilitate the efficient restructuring of distressed companies for the benefit of their stakeholders. For more information, read our briefing: [Cayman Islands welcomes introduction of](#)

## CIMA publishes revised regulatory procedures for the deregistration of Cayman Islands regulated funds

Following consultation with industry, the Cayman Islands Monetary Authority (CIMA) has issued new regulatory procedures for Cayman Islands open-ended funds regulated under the Mutual Funds Act and for closed-ended funds registered under the Private Funds Act regarding their deregistration with CIMA, either at the end of the life of the fund or in certain limited circumstances where their regulatory status may have changed.

The principal changes introduced in the new deregistration procedures relate to the timing of the deregistration process and the elimination of the option to place a fund in "License under Termination" (LUT) or "License under Liquidation" (LUL) status with CIMA. Under the old procedures, filing the deregistration documents with CIMA and, as a result, placing a fund in LUT or LUL, prior to the fund's final distribution and audit could, in certain circumstances, reduce or eliminate CIMA's annual fund registration fees for the following year. Under the new procedures, the fund must complete and file its final audit (or seek and be granted an audit waiver from CIMA) and be in good standing (including payment of all fees) before the deregistration documents may be filed.

The new procedures apply to any new deregistration applications made on or after 17 August 2022. CIMA have confirmed that any funds that had previously submitted LUT or LUL applications under the old procedures will still be able to take advantage of the fee concessions under those procedures, provided that they meet the filing requirements associated with their LUT or LUL status. For more information, read our briefing: [CIMA publishes revised regulatory procedures for deregistration of Cayman Islands regulated funds](#)

## CIMA consultation on corporate governance

CIMA has issued a consultation draft of a proposed "Rule on Corporate Governance for Regulated Entities" (Rule) and "Statement of Guidance on Corporate Governance for Mutual Funds and Private Funds" (SoG) to private sector associations in the Cayman Islands for industry feedback. The intention of the Rule and the SoG is to adopt relevant corporate governance elements from the existing corporate governance framework and make enhancements as needed based on a review of international standards, jurisdictional comparison, and regulatory/supervisory needs.

CIMA has stated that "the proposed measures and consequent expansion of scope are not

anticipated to create any undue burden for regulated entities as these entities should already be implementing a comprehensive corporate governance framework suitable for the size, complexity, structure, and risk profile of its operations. It is important to state that corporate governance is core to financial entity soundness and prudence. Additionally, the proposed Rule and SOG do not fundamentally deviate from key corporate governance principles already required and/or guided by the current Cayman Islands corporate governance framework." In addition, CIMA has clarified that, notwithstanding the proposed Rule being applicable to all regulated entities, CIMA would expect (and explicitly outlines) that the established corporate governance framework for regulated entities should correspond with the size, complexity, structure, and risk profile of its operations.

Ogier, in conjunction with other industry bodies, is in the process of providing comments to CIMA on the proposals and will issue a further briefing to our clients once the Rule and the SoG have been finalised and published, outlining the effect, if any on Cayman Islands regulated funds.

## **Have you considered protecting the name of your fund as a trade mark?**

Fund names may become valuable commercial assets when they are successfully registered as trade marks. It is a common misconception that once a fund vehicle is formed the owner can exclusively use the fund name in respect of financial services and prevent third parties from using the same name.

The mere formation of your fund vehicle with a particular legal name does not provide you with trade mark protection and should not be taken as an indication that the fund name is available for use and registration as a trade mark. A third party may have already used and/or registered a similar or identical fund name as a trade mark, which could pose threats to your use of your chosen fund name and your ability to protect it.

Your fund name will serve to identify and distinguish your fund and attract investors. Without trade mark protection comes risk. If you don't secure trade mark protection, your rights against third parties will be limited.

For more information on the benefits of registering your fund's name and the procedures, please read our briefing: [Why do you need to protect the name of your fund as a trade mark?](#)

## **UK Register of Overseas Entities now in force**

The UK's Register of Overseas Entities took effect on 1 August 2022.

Certain overseas entities owning UK property (including legal persons established in Cayman,

such as property funds or private funds holding UK property or the trustees of Cayman law trusts, such as property unit trusts) will need to register with the UK Companies House and provide information on beneficial owners, ie any individual or entity having significant influence or control over the entity. Entities that have made relevant disposals of land since 28 February 2022 must also provide information about their beneficial ownership immediately prior to the disposal.

The register is a requirement of the Economic Crime (Transparency and Enforcement) Act 2022 (**Economic Crime Act**), which is aimed at improving transparency in ownership of UK real estate and allowing for more effective investigation of suspicious wealth.

Entities already holding UK property should be aware that they must file the required information during the six month transitional period, which is open now and runs to the end of January 2023.

The overseas entity and its officers will be responsible for providing information for registration purposes and annual updates or confirmations that no reportable changes will be required.

Failure to comply with the Economic Crime Act's requirements is a criminal offence and will affect an entity's ability to deal with UK property (though there are some exceptions for those in limited circumstances).

## Cayman introduces reforms to its restructuring regime

The Cayman Islands insolvency and restructuring industry welcomes the introduction of the much-anticipated reforms to the jurisdiction's restructuring regime. These came into force on 31 August 2022. The reforms, which were originally published in 2021, will facilitate the efficient restructuring of distressed companies for the benefit of their stakeholders.

The increased accessibility and flexibility introduced by the new restructuring regime will enable Cayman Islands companies to reorganise efficiently for the benefit of their stakeholders while ensuring that robust protections remain in place to provide creditors and shareholders with confidence in the restructuring process. It also demonstrates the Cayman Islands' commitment to developing and adapting its legislative regime to meet the ever-changing needs of large-scale cross-border restructuring arrangements.

For more information, please read our briefing: [Cayman Islands welcomes introduction of reforms to restructuring regime](#)

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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