

## CAYMAN ISLANDS REGULATORY UPDATE

### WELCOME

This update from Appleby's Cayman office focuses on key regulatory developments which took place in 2022. Each section is divided into parts setting out key legislative developments, relevant government consultations, key Cayman Islands Monetary Authority (**CIMA**) publications and key Department for International Tax Cooperation (**DITC**) publications.

We also examine some regulatory updates on the horizon for 2023, and discuss some key upcoming and anticipated changes.

Overall, the outlook for regulatory development remains very active. We encourage clients to keep a close eye on the horizon, and to contact Appleby to discuss the matters important to you.

Links to related Appleby published briefings and related CIMA and government publications are available throughout this document. The information provided below is up to date as of [20] February 2023.

### LEGISLATIVE UPDATES

#### CAYMAN ISLANDS LEGISLATION

##### **Limited Liability Companies Act (2022 Revision) (LLC Act)**

The LLC Act was amended on 19 October 2022 by the Limited Liability Companies (Amendment) Act, 2022 (**LLC Amendment Act**) which came into operation on that date. The LLC Amendment Act confirms the view that Appleby had taken since the legislation was initially passed: there is no need to file a certificate of amendment on membership changes with the Registrar of Companies whenever an LLC interest is issued or transferred. An LLC is separately required to maintain at its registered office, the names and addresses of each person who is a member, date they became/ceased to be a member(s) and the nature of their voting rights. There is no need to duplicate the effort by separately filing same with the Registrar.

##### **The Companies (Amendment) Act, 2021 (Companies Amendment Act)**

The Companies Amendment Act came into force on 31 August 2022 and created a new standalone restructuring regime, separate from existing company law winding-up procedures. Under the new regime, directors are empowered to petition the Court for the appointment of a restructuring officer if the company is (or is likely to become) unable to pay its debts and intends to present a compromise or arrangement to its creditors.

### Upcoming CIMA filing deadlines

**Audited financial statements for mutual funds and private funds with a FYE of 31 December 2022:** 30 June 2023

**FAR Form for mutual funds and private funds with a financial year end of 31 December 2022 FAR Form:** 30 June 2023

### Upcoming FATCA and CRS filing deadlines

**IRS Form 1065 filing:** 15 March 2023

**DITC registration for all FATCA/CRS defined financial institutions:** 30 April 2023

**2022 CRS Filing declaration:** 31 July 2023

**2022 FATCA reporting:** 31 July 2023

**2022 CRS Compliance form:** 15 September 2023

## CONSULTATIONS

### CIMA published AML Guidance

On 16 December 2022, CIMA published a consultation paper proposing to amend the guidance notes on the prevention and detection of money laundering, terrorist financing and proliferation financing in the Cayman Islands (**AML/CFT/PF Guidance**) by introducing guidance for licensees and registrants using technological solutions for remote and virtual customer onboarding and ongoing client due-diligence monitoring. This consultation closed on 1 February 2023. The additional clarity around “e-KYC” is fully supported by Appleby and welcomed by the financial services industry and is indicative of CIMA’s willingness to develop practical guidance to financial service providers (**FSPs**) embracing technological advances.

### Amendments to Anti-Money Laundering Regulations

On 25 January 2023, the government published a consultation proposing to amend the Anti-Money Laundering Regulations. The proposed changes to the Anti-Money Laundering Regulations cover, amongst others, implementing updated FATF requirements on assessing proliferation financing risks and imposing additional AML/CFT obligations on designated non-financial businesses and professions. The consultation was initially open for feedback until 15 February 2023 but has now been extended by the government until 31 March 2023.

### Relevant case-law on beneficial ownership registers

In November 2022, the European Court of Justice (**ECJ**) held that a directive requiring European member states to make beneficial ownership information on corporate and other legal entities publicly accessible was invalid. As a result of this ECJ decision, public access to a number of European beneficial ownership registers has currently been restricted. Additionally proposals for publicly accessible beneficial ownership registers in the Isle of Man, Guernsey and Jersey has also been delayed.

Although, the ECJ’s decision does not bind the United Kingdom (**UK**) or the Cayman Islands as an ECJ decision is no longer binding on English courts post-Brexit, the English courts and the UK government generally will need to consider this decision as the right to a private and family life is protected under UK law. We also understand that beneficial ownership registers have featured heavily in the government’s policy and approach to the reduction of financial crime.

As a result of the ECJ’s decision, the Cayman Islands Ministry of Financial Services has stated that it is currently reviewing the ECJ judgment to determine what (if any) implications the judgment has on government proposals to introduce publicly available beneficial ownership registers in the Cayman Islands. At the time of writing, it remains to be seen how the Ministry will treat this ECJ decision.

For a more detailed analysis of the ECJ's decision, please see our previous regulatory update [here](#).

## CIMA PUBLICATIONS

### **Key 2022 publications included:**

**Environmental, Social and Governance and Sustainable (ESG):** In April 2022 and July 2022, CIMA published two supervisory ESG circulars stating that as part of its supervisory mandate, CIMA continues to assess, review and participate in international engagement with the aim of developing a suitable regulatory and supervisory approach for climate related and other ESG-related risks. A link to the circulars are available [here](#) and [here](#).

**CIMA's findings from on-site inspections:** In July 2022, CIMA published a supervisory circular setting out its findings from carrying out on-site inspections of firms registered under the Securities Investment Business Act (**SIB Act**) as registered persons. The inspection period covered October 2020 to December 2021. The findings identified notable weaknesses across the areas of AML/CFT/PF compliance and financial sanctions. In particular, CIMA noted that certain firms have inadequate AML/CFT policies and procedures, customer due-diligence and ongoing monitoring programmes. A link to that circular is available [here](#).

**Dividend payments and distributions:** In July 2022, CIMA published a circular reminding banks, money services businesses, building societies, development banks, cooperative societies and credit unions to notify and/or seek approval from CIMA prior to paying dividends, capital repayments or distributions to their shareholders, members and parent companies. A link to that circular is available [here](#).

**Cancellation or deregistration of a fund:** In August 2022, CIMA issued a new rule and regulatory procedure for cancelling licences or deregistering mutual funds and private funds (**Regulated Funds**) (available [here](#)). The principal aim of the changes is to streamline the process for cancelling and deregistering Regulated Funds. Regulated Funds must be in good standing with CIMA when they file their deregistration application under the new rules. Good standing means funds must have paid all prescribed fees and submitted all required audited financial statements and must not have any outstanding queries or regulatory filings with CIMA.

### **CIMA administrative fines regime**

During 2022, CIMA ramped up its enforcement actions and imposed in total seven fines on financial service providers and an individual. The 2022 fines included six fines imposed against FSPs and one fine imposed against an individual formerly connected to an insurance manager. The firms targeted and fined were two

insurers, one insurance manager and three securities investment businesses. It is evident from the increased number of fines imposed during 2022 (three fines were imposed against FSPs in 2021) that CIMA is making enforcement a priority.

## Financial sanctions targeting Russia

During 2022 and continuing into 2023, international bodies including the UK's HM Treasury Office of Financial Sanctions Implementation (**OFSI**) issued a wide range of sanctions against Russia which built on the existing sanctions legislative framework already in place as a result of Russia's annexation of Crimea in 2014.

In the Cayman Islands, financial sanctions issued by the OFSI and subsequently enabled in the Cayman Islands by way of a statutory instrument apply to any person resident in the Cayman Islands, to any legal person incorporated or constituted under the laws of the Cayman Islands and to any legal person in respect of any business done in whole or in part within the Cayman Islands.

Sanctions targeting Russia have a broad impact targeting individuals and entities from various sectors, including political, business and military subjecting them to asset freezes.

On the basis that financial sanctions are likely to remain in place in the near future, FSPs should continue to monitor all relevant sanctions lists and screen all counterparts in order to identify persons with a connection with Russia. Additionally, in the case of any new transaction or contract contemplated by a Cayman Islands entity, particular care should be taken at due-diligence stage to ensure that any implications of these sanctions are identified quickly.

## DEPARTMENT FOR INTERNATIONAL TAX COOPERATION PUBLICATIONS

**Common reporting standard enforcement guidelines:** In March 2022, the Cayman Islands Tax Information Authority (**TIA**) issued new enforcement guidelines relating to the common reporting standard (as updated in July 2022 and August 2022). These guidelines apply to any persons subject to the CRS regulations and sets out the TIA's power to administer sanctions where a breach of the CRS regulations has been committed or may have occurred and sets out details relating to the TIA's approach to sanctioning under the CRS regime. The latest version of these guidelines is available [here](#).

**Economic substance enforcement guidelines:** In June 2022 (as updated in July 2022 and August 2022), the TIA also published enforcement guidelines relating to the economic substance regime. The guidelines provide clarity on the circumstances where the TIA has the authority to impose administrative penalties under the Economic Substance Act for missed reporting, an initial failure to satisfy

the economic substance test and a subsequent failure to satisfy the economic substance test. The latest version of these guidelines is available [here](#).

**DITC information requests and breach notices:** We understand that the DITC have issued requests for information and subsequent breach notices where this information has not been provided. These requests and breach notices were issued where there had been a failure to respond appropriately to the DITC. In our experience, the DITC generally communicate and send requests for information via e-mail and as a result a request for information is generally sent to the email address provided as the principal point of contact on the DITC portal.

Information requests may also be sent to the entity's authorising person as provided on the DITC portal. We suggest that firms refresh their email contact details (where required) with the DITC to ensure all DITC requests and notices are received.

## 2023 HORIZON SCANNING

Below are some key upcoming and anticipated changes that, in our view, FSP's should be mindful of during 2023:

**CIMA circular relating to 2023 audit plans:** On 3 January 2023, CIMA issued a circular to all securities investment business licensees, restricted licensees and registered persons setting out CIMA expectations that such persons undertake regular internal audits controls and infrastructure in order to ensure that they are suitably robust in consideration of the nature and scale of their operations. CIMA asked each person to provide within five (5) working days from the date of the circular a 2023 schedule of internal audit reviews. Appleby's regulatory team worked with clients to meet this tight timeline. Typically, such circulars are published on CIMA's website but in this particular instance the circular was sent directly to the FSP.

**Amendments to the AML guidance notes and AML Regulations:** As mentioned above, we can expect revisions to the AML/CFT/PF Guidance and amendments of the AML Regulations arising out of recently published consultations.

**CIMA's administrative fines regime:** During 2022, CIMA imposed its first batch of non-AML related administrative fines against two insurers, an insurance manager and an individual formerly connected to an insurance manager. This essentially broadened the scope of CIMA's enforcement priorities wider than seeking enforcement action for contraventions of the AML Regulations and is potentially indicative of CIMA's enforcement priorities for the year ahead to pursue additional non-AML related enforcement actions.

Although CIMA does not publicly publish its enforcement priorities, CIMA's securities business division has in recent months published two circulars detailing the findings of CIMA inspections identifying areas of AML non-compliance. Potentially some enforcement cases may arise from such CIMA inspections.

Additionally, as mentioned above, the January 2023 circular relating to internal audit plans could potentially be another area of interest for CIMA to identify weaknesses and deficiencies in an FSP's controls and processes, and potentially may result in enforcement action.

*This information is provided for general information purposes only and is not intended to constitute legal advice. For specific regulatory advice, please contact any member of our Appleby regulatory team.*



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## ABOUT APPLEBY

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