

Cayman Islands Government Pass Legislative Amendments to Address CFATF Report

The Cayman Islands Government has passed a number of minor legislative amendments in recent weeks which implement recommendations arising from the Caribbean Financial Action Task Force's Mutual Evaluation Report with regard to the Cayman Islands. These amendments are intended to ensure that the Cayman Islands remains at the forefront of compliance with global standards to prevent and detect money laundering and terrorist financing.

The amendments affected a number of pieces of existing legislation, many of which will be relevant only to very specific industry sectors and, further, some of the more technical amendments are highly unlikely to be of relevance to most clients. Accordingly, this update does not seek to address the full range of the amendments, focusing only on those that are likely to be of most interest to clients of the Maples Group.

Amendments to the Companies Law (2018 Revision)

The Companies (Amendment) Law, 2019, published on 8 August 2019, introduced a range of measures relating to the register of members, notifications regarding directors and officers and the beneficial ownership regime.

Register of Members

Section 40 of the Companies Law (2018 Revision) (the "Companies Law") was amended so as to add a new requirement that the register of members of a Cayman Islands company specify, with respect to each category of shares, whether such category of shares carries voting

rights and, if so, whether such voting rights are conditional.

Companies incorporated on or after 8 August 2019 will have three months (until 7 November 2019) to update their register of members to include this information, whereas companies incorporated prior to 8 August 2019 will have six months (until 7 February 2020) to update their register of members. The Maples Group is already working to update its systems to ensure that this information can be recorded wherever a Maples Group entity is responsible for maintaining the register of members.

Voting rights are specifically defined, for the purpose of this provision, as the right "to vote at general meetings of the entity on all or substantially all matters." This means that shares that grant their holders the right to vote only on limited matters (such as the appointment of a particular director, for example) will not be deemed to carry voting rights. Also, a voting right is considered to be conditional where the voting right (which must still be a right to vote at general meetings on all or substantially all matters) arises in certain circumstances (e.g. following a trigger event).

This amendment will require each existing Cayman Islands company to conduct an analysis of each existing class of shares to determine how such class should be categorised and to ensure its register of members reflects such categorisation.

Directors and Officers

The period within which a Cayman Islands company must notify the Registrar of Companies

(the "Registrar") of any changes to its directors and officers has been reduced from 60 days to 30 days in a reversion to the position prior to 2015. The penalties for a breach of this obligation remain unchanged and, accordingly, are generally capped at approximately US\$610 in the absence of knowing and wilful breach.

A new Section 55A has been added to the Companies Law which grants any person the ability to inspect a new 'list of names' of the current directors of a Cayman Islands company upon payment of a fee of approximately US\$61. This list, which will be maintained by the Registrar rather than at individual registered offices, differs from the register of directors and officers in that it features only the names (not addresses) of current directors and alternate directors and does not feature any historic data regarding past directors. Any inspection must be at the offices of the Registrar and will be subject to such conditions as the Registrar may impose.

This new Section 55A is not yet in force and will only come into force upon a future date to be appointed by the Cabinet of the Cayman Islands Government. We understand that the Registrar will need to build the systems to support these requirements and that the provision will only be brought into effect once those systems are in place.

Beneficial Ownership

The penalties for breach of obligations relating to the beneficial ownership regime (the "BOR Regime") have been increased with the effect that:

- (a) second offences by companies who fail to comply with their BOR Regime obligations will attract penalties of approximately US\$120,000, while a third offence will render a Cayman Islands company liable to being struck off;
- (b) second offences by individuals or entities failing to respond to formal notices issued under the provisions of the BOR Regime will attract penalties of approximately

US\$60,000 and / or two years' imprisonment; and

- (c) second offences by those failing to provide required beneficial ownership information (including existing registered persons who fail to notify the company of changes to their information) will similarly attract penalties of approximately US\$60,000 and / or two years' imprisonment.

These changes highlight the importance of all Cayman Islands companies ensuring that they keep the information filed on the beneficial ownership register under regular review and, further, ensuring that those persons named on beneficial ownership registers are aware of their ongoing obligation to keep the company informed of changes in their required particulars (such as address changes or new passports).

Information Disclosure

The Registrar is required to disclose, upon written request by specified Cayman Islands regulatory and policing bodies, any information which it holds with respect to a Cayman Islands company where such disclosure is required to enable such bodies to discharge their functions or exercise their powers under key regulatory and criminal legislation. There are restrictions on the use and onward disclosure of such information by such bodies.

Amendments to the Mutual Funds Law (2019 Revision)

The Mutual Funds (Amendment) Law, 2019, published on 8 August 2019, extends the circumstances in which the Cayman Islands Monetary Authority ("CIMA") may exercise its most stringent powers to include any breach by mutual funds (or regulated EU Connected Funds) of any provision of the Mutual Funds Law (2019 Revision) (the "Mutual Funds Law") or any provision of the Anti-Money Laundering Regulations (2018 Revision) (the "AML Regulations"), in each case as amended and/or revised from time to time.

These powers, which include the authority to:

- (a) cancel any mutual fund licence or mutual fund registration granted under the Mutual Funds Law;
- (b) impose conditions on any mutual fund licence;
- (c) require the substitution of any promoter or operator of a mutual fund; and
- (d) appoint a person to advise the mutual fund on the proper conduct of its affairs

were previously reserved only for the most egregious of circumstances.

This amendment highlights CIMA's increased focus on compliance by mutual funds with both their obligations under the Mutual Funds Law, and under the legislation designed to prevent and detect money laundering and terrorist financing. While breaches of these regimes were historically only able to be pursued through lengthy legal proceedings, this provision now grants CIMA a more immediate enforcement tool, alongside the evolving administrative fines regime, with which to continue to ensure compliance by registered mutual funds.

Similarly, CIMA has been granted greater enforcement powers with respect to any licensed mutual fund administrator which breaches any provision of the Mutual Funds Law, the AML Regulations or, where they are also a corporate services provider, their obligations in connection with the BOR Regime.

Amendments to the Limited Liability Companies Law (2018 Revision)

Managers

A new section 34A was added to the Limited Liability Companies Law (2018 Revision) (the "LLC Law") which provides that any person may inspect a list of the current managers of any Cayman Islands limited liability company at the offices of the Registrar upon payment of a fee of

approximately US\$61. This provision is wholly equivalent to that introduced as new section 55A of the Companies Law and, like that provision, will come into force only upon a future date to be appointed by the Cabinet of the Cayman Islands Government.

Similarly, the period for notifying the Registrar of changes to the managers of a Cayman Islands limited liability company is reduced to thirty days as a consequence of the changes to the Companies Law (since the relevant provisions are incorporated by reference into the LLC Law).

Beneficial Ownership

Amendments have been made with respect to the penalties for breaches under the BOR Regime, as it relates to Cayman Islands limited liability companies, which mirror those made with respect to the Companies Law (see above).

Information Disclosure

As with the Companies Law, the Registrar is now required to disclose, upon written request by specified Cayman Islands regulatory and policing bodies, any information which it holds with respect to a Cayman Islands limited liability company where such disclosure is required to enable such bodies to discharge their functions or exercise their powers under key regulatory and criminal legislation. There are restrictions on the use and onward disclosure of such information by such bodies.

Other Amendments

Other legislative updates were made with respect to the Limited Liability Partnership Law, 2017, the Insurance Law, 2010, the Building Societies Law (2014 Revision), the Cooperative Societies Law (2001 Revision), the Monetary Authority Law (2018 Revision) and the Public Management and Finance Law (2018 revision). These changes are likely to be of interest only to a limited number of Maples Group clients and so are not detailed in this update.

More information

If you would like to know more about the amendments covered in this update or other pieces of legislation referenced above, please speak with your usual Maples Group contact or any of the contacts listed below.

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