



THE REGULATORY 15/15

Podcast

Episode 3 - 16 May 2023

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Content

- Financial Action Task Force ("**FATF**") update
- Rules and Statements of Guidance ("**SOG**") on Internal Controls and Corporate Governance
- New Bills
- Data Protection

Introduction

Introduction to the 15/15

- A 15-minute summary of the latest developments in the regulatory laws of the Cayman Islands released on the 15th day of every month
- A copy of the previous 15/15 released on 15 April can be accessed on our website: [The Regulatory 15/15: April 2023](#)
- Comments and suggestions to format of the 15/15 are always welcome – please email speakers directly

Financial Action Task Force ("FATF") update

FATF Update

- His Majesty The King v Canover Norbert Watson and Bruce Andrew Blake (sentence delivered 19 April, 2023)
- Ministry of Financial Services & Commerce Media Release dated 5 May, 2023

Rules and SOG on Internal Controls and Corporate Governance

New and Revised CIMA Rules and SOG

- On 14 April 2023, CIMA published certain new and updated regulatory measures in the Cayman Islands Gazette:
 - (New) Rule and SOG (combined into one doc) on Internal Controls for Regulated Entities
 - (Revised) Rule on Corporate Governance for Regulated Entities
 - (New/Revised) SOG on Corporate Governance for Mutual Funds and Private Funds
 - Other Revised Rules / SOGs include
 - Outsourcing Regulated Entities (includes SIBA RPs, but **not** Mutual Funds and Private Funds)
 - Cybersecurity for Regulated Entities (includes SIBA RPs, but **not** Mutual Funds and Private Funds)
 - Nature, Accessibility and Retention of Records (includes SIBA RPs and Mutual and Private Funds)

New and Revised CIMA Rules and SOG (Cont'd)

- Effective Dates
 - Rule and SOG on Internal Controls and Rule on Corporate Governance come into effect 6 months after publication date, i.e. 14 October 2023
 - The other updated Rules and SOG (including Corporate Governance for funds) and the Policy are technically in effect from publication date, i.e. 14 April 2023
- Reminder re Status of Rules and SOGs
 - Rule = a CIMA directive creating a regulatory obligation, breach of which may lead to a fine or regulatory action
 - SOG = a recommendation to assist compliance with law / regulation and a measure for CIMA to assess compliance
 - Enforcement per the Enforcement Manual and/or CIMA Admin Fine regime

New Rule and SOG on Internal Controls

- Rule / SOG applies to all "regulated entities" (licensees, SIBA RPs and registered funds are all picked up so many aspects are high-level, generic and non-exhaustive)
- CIMA recognizes that application may vary subject to structure, size, nature, complexity and risk profile
- Delegation to (or reliance on) another service provider (e.g. 3rd party or affiliate OSP) is permitted subject to certain conditions

New Rule and SOG on Internal Controls (Cont'd)

- Rule is separated into two parts:
 - Part 1 Five key components of internal controls
 - Part 2. Sector specific guidance - currently only for fiduciary services and securities investment business (IM / IAs))
- The five key components (of an internal control framework) should address
 - Control environment
 - Risk identification and assessment
 - Control activities and segregation of duties
 - Information and communication
 - Monitoring activities and correcting deficiencies

New Rule and Revised SOG on Corporate Governance

- Rule applies to **all regulated entities**
- SOG for regulated mutual funds (revised) and private funds (new)
- A separate SOG applies to other regulated entities (including registered investment managers / advisers)
- Existing Corporate Governance SOG for all regulated entities in effect from Feb 2016 and for regulated mutual funds from Dec 2013
- Effective Dates for new / updated measures
 - Rule comes into effect 14 October 2023
 - SOG for MFs / PFs is effective from 14 April 2023
- Same regulatory status and enforcement approach as for Internal Controls

New Rule on Corporate Governance

- Entity must establish, implement and maintain corporate governance framework **commensurate with size, complexity, nature of business, structure, risk profile and its operations**
- Framework must address, at a minimum:

Corporate Governance Framework	
Objectives and strategies	Risk management and internal control systems
Structure of governance of the Governing Body	Conflicts of interest and code of conduct
Appropriate allocation of oversight and management responsibilities	Remuneration policy and practices
Independence and objectivity	Reliable and transparent financial reporting
Collective duties of Governing Body	Transparency of communications
Duties of individual directors	Duties of Senior Management
Appointments and delegation of functions and responsibilities	Relations with CIMA

Revised SOG on Corporate Governance for Mutual Funds and Private Funds

- Adds regulated private funds to the application of the existing SOG for regulated mutual funds / private fund specific terms, e.g. marketing materials (rather than OM, etc.)
- Adds definition of "Operator" in place of former "Governing Body" to acknowledge defined terms in the Acts
- Governing Body Obligations
 - Has ultimate responsibility for oversight of fund business and compliance with the law / regulation
 - Should regularly satisfy itself that its service providers (and thereby the fund) are complying with law/regulations, i.e. obtain regular reporting
 - Identify, disclose (document), monitor and manage all conflicts of interest
 - Should meet at least annually (or more frequently if appropriate to size, nature of business) / request reporting from service providers

New Bills

New Bills

- On 3 April 2023, the Cayman Islands Government published the [Proceeds of Crime \(Amendment\) Bill, 2023](#) in the Cayman Islands Gazette
- The introductory notes to the Bill indicate that the Bill seeks to amend the Proceeds of Crime Act (2020 Revision) ("the principal Act") in order to:
 - reform the principal Act in the areas of intelligence gathering and sharing, and investigations;
 - provide protection for self-regulatory bodies against liability;
 - ensure that the principal Act conforms to international best practices;
 - modernise the conduct of prosecutions, which includes clarifying the evidential basis on which it may be shown that property is criminal property or is obtained through unlawful conduct; and
 - provide for incidental and connected purposes
- In a broader sense, several of the proposed amendments look to align the wording of the principal Act more closely with the corresponding provisions within the UK Proceeds of Crime Act, 2002

New Bills (Cont'd)

- During the last meeting of Parliament, which took place on 26-28 April 2023, seven amendment bills were passed:
 - [Monetary Authority \(Amendment\) Bill, 2023](#)
 - [Companies Management \(Amendment\) Bill, 2023](#)
 - [Directors Registration and Licensing \(Amendment\) Bill, 2023](#)
 - [Insurance \(Amendment\) Bill, 2023](#)
 - [Money Services \(Amendment\) Bill, 2023](#)
 - [Securities Investment Business \(Amendment\) Bill, 2023](#)
 - [Virtual Asset \(Service Providers\) \(Amendment\) Bill, 2023](#)

New Bills (Cont'd)

- These bills strengthen CIMA's power to levy administrative fines by extending the regime to cover partnerships, exempted liability partnerships, limited liability partnerships, partners of such partnerships, unincorporated associations other than a partnership; and the persons concerned in the management or control of such associations
- The amendments also allow CIMA to spontaneously share with other overseas regulatory authorities non-public information on criminal conduct uncovered during the course of carrying out its duties

Data Protection

Data Protection

On 27 April 2023, the Office of the Ombudsman (the "Ombudsman") issued an enforcement order made under the Data Protection Act (As Revised) (the "DPA") against a real estate agent. A copy of the decision is available [here](#).

- Background

On 10 May 2021, the Ombudsman received a complaint from an individual (the "Complainant") alleging that the real estate agent (the "Data Controller") had failed to keep the Complainant's personal data secure. The Data Controller's email account was hacked, leading the Complainant to send deposit monies erroneously to a bank account of the fraudsters.

Data Protection

Conclusions

The Data Controller was required to take the following steps to bring itself into compliance, as soon as practicable, but in any event, no later than 30 days after the Order was issued:

- The Data Controller must migrate to a business e-mail solution that supports Multi-Factor Authentication, industry-standard monitoring and filtering for malicious e-mails, administrative access to audit logs and additional vendor support to facilitate investigations into any future personal data breaches
- The Data Controller is required to retain the services of a reputable IT service provider to provide ongoing IT support to its business in order to ensure that it maintains compliance with the seventh data protection principle
- The Data Controller is required to undertake cybersecurity and DPA awareness training at least annually
- The Data Controller must develop appropriate policies and procedures to ensure that personal data is safeguarded and to maintain compliance with the provisions of the DPA

This presentation was presented on, and is only accurate to 16 May 2023. The information within this presentation is provided for general guidance only, is not intended to be comprehensive and does not constitute legal advice or give rise to an attorney / client relationship.

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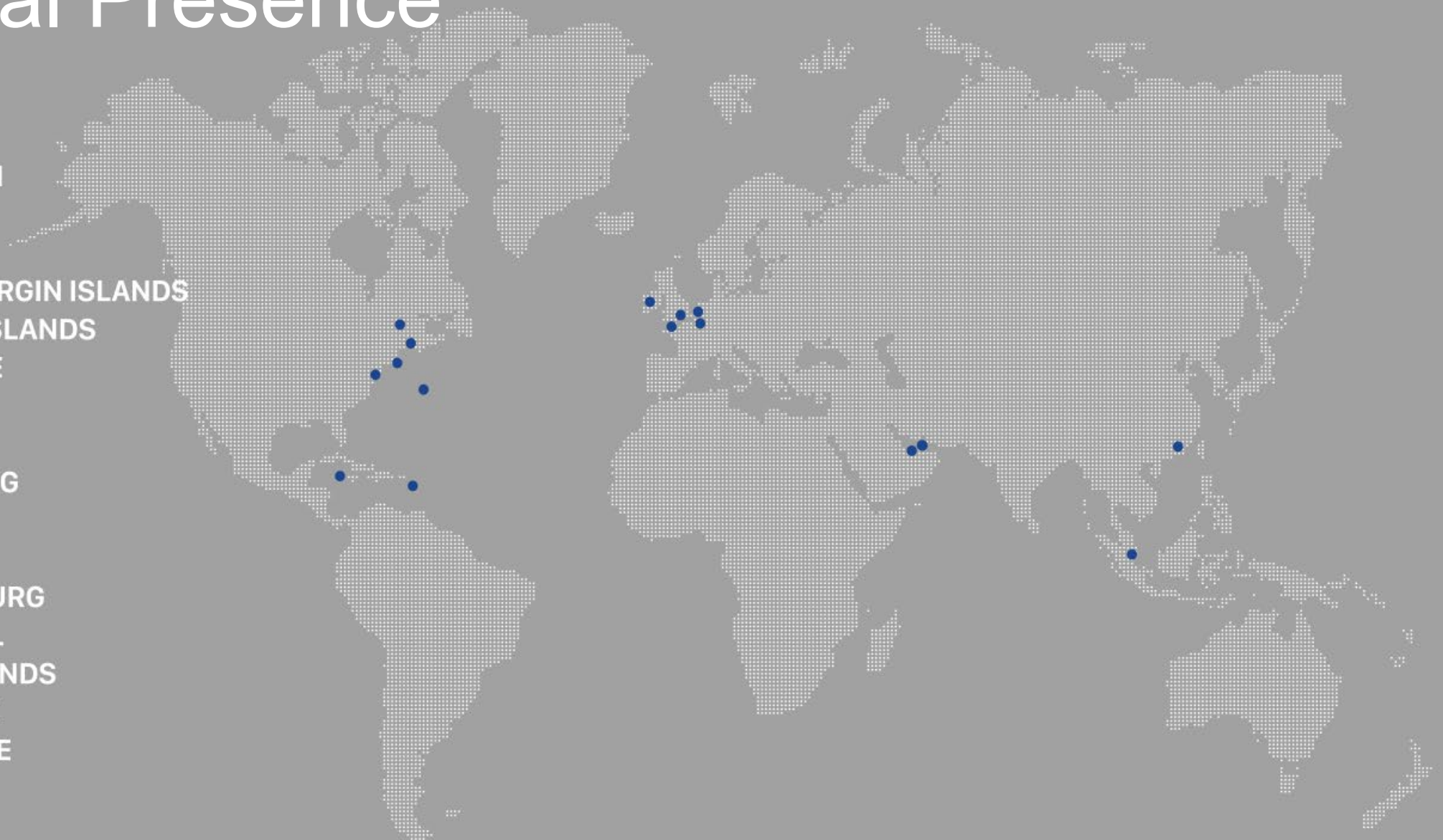
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