

Cayman Islands and the FATF "Monitoring List"

On 25 February 2021, the Financial Action Task Force ("FATF") added the Cayman Islands to its "Monitoring List", i.e. the list of jurisdictions under increased monitoring in the area of anti-money laundering / countering terrorist and proliferation financing ("AML / CFT / CPF"). This list (sometimes referred to as the FATF's 'grey' list) comprises jurisdictions that are actively working with the FATF to address strategic deficiencies in their AML / CFT / CPF regimes.

For the avoidance of doubt, it should be noted that the Monitoring List is not the same as the FATF 'Call for Action' or 'Non-Cooperative Jurisdiction' list (sometimes referred to as the FATF 'black' list).

This update briefly analyses the limited practical consequences of this addition to the Monitoring List for clients using Cayman Islands vehicles.

Practical Consequences

- **AML / CFT; Enhanced Customer Due Diligence.** The FATF does not require the application of enhanced due diligence measures to be applied to jurisdictions under increased monitoring, but it encourages member jurisdictions to take the listing into account when conducting their risk analysis. The measures to be applied will vary, but may result in: (a) a requirement to perform more comprehensive due diligence on the customer / client's source of funds and source of wealth (e.g. further information may need to be provided to financial intermediaries, such as correspondent banks) and / or (b) increased internal controls on business acceptance and ongoing monitoring.
- **Tax Implications.** The listing should not impact any existing representations or commitments made by tax authorities (as well as regulatory authorities) under agreements with the Cayman Islands in the area of international mutual tax cooperation. Equally, the listing is not a tax measure so would not for example have any impact on dealings with Cayman Islands counterparties under the European Union's DAC6 tax reporting regime.

Based on prior practice, once the Monitoring List is updated we anticipate that Financial Crimes Enforcement Network will issue an advisory to US financial institutions to inform them of the update, and to remind them that they should consider the FATF's statements when reviewing their obligations and risk-based policies, procedures, and practices with respect to the jurisdictions on the Monitoring List.

Again based on prior practice, it is likely that the EU Commission will take this addition to the Monitoring List into account when updating its own list of 'high-risk third countries'. We will provide a further, specific, client update if and when that occurs.

Why the addition to the FATF Monitoring List?

The Caribbean Financial Action Task Force ("CFATF") and FATF assess the AML / CFT / CPF regimes for countries globally on an ongoing basis, examining the AML / CFT / CPF regimes for both technical compliance ("Technical Compliance") and effectiveness ("Effectiveness").

The Cayman Islands' latest Technical Compliance assessment was published on 19 February 2021 (the "Technical Report")¹. The Technical Report rated the Cayman Islands as compliant or largely compliant with 39 out of the 40 FATF Recommendations².

The Cayman Island's last Effectiveness assessment published in 2019, while noting that the Cayman Islands' AML / CFT / CPF legislative framework was "well developed" and technically compliant, proposed that the jurisdiction take 63 Recommended Actions ("RAs") in relation to Effectiveness during an "observation" period. Since 2019, the Cayman Islands has been actively working to address those RAs and has been reporting its progress regularly to the CFATF and FATF.

The FATF recognised that the Cayman Islands had successfully satisfied 60 out of those 63 RAs. The two reasons highlighted by Dr Marcus Pleyer, the FATF President, for the Cayman Islands' inclusion on the Monitoring List were (i) the need for the Cayman Islands Monetary Authority to apply effective, proportionate and dissuasive sanctions to ensure effective and timely remediation of AML breaches by regulated entities and (ii) the need for adequate and effective sanctions to be imposed on entities that do not file accurate, adequate and up to date

beneficial ownership information with the relevant authorities.

The reference about sanctions under the Cayman Islands' beneficial ownership regime is unusual given that the FATF also announced their intention to develop new global beneficial ownership standards by the end of 2021, and that the Cayman Islands is one of only a few jurisdictions globally to have already implemented a beneficial ownership regime in advance of such standards.

Against the backdrop of (i) the Cayman Islands' rating as compliant or largely compliant with 39 out of the 40 FATF Technical Compliance Recommendations and (ii) the Cayman Islands having satisfied 60 out of 63 Effectiveness RAs, the FATF President was asked to explain the Cayman Islands' addition to the Monitoring List. Dr Pleyer explained it on the basis that "the Cayman Islands are a major financial centre and we expect commensurate measures from countries that have higher risks".

Cayman Islands Government Release

A copy of the 25 February 2021 press release from the Cayman Islands Ministry of Financial Services can be found [here](#)³.

The FATF has provided an action plan for the Cayman Islands to finalise work on the three remaining RAs. The Cayman Islands Government has confirmed that it is already making progress in completing the remaining three RAs.

Further Information

If you would like further information, please reach out to your usual Maples Group contact or any of the persons listed below.

¹ See the CFATF 2nd Enhanced Follow-up Report & Technical Compliance Re-Rating of the Cayman Islands [here](#).

² The only Partially Compliant rating relating to the Cayman Islands' virtual asset service regime, which substantively came into effect from 31 October 2020, after the review period.

³ <https://www.gov.ky/news/press-release-details/cayman-commits-to-aml-and-cft-effectiveness>

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