

The Cayman Islands Administrative Fines Regime & Investment Funds

On 26 June 2020, the Cayman Islands Monetary Authority's ("CIMA") powers to impose administrative fines were extended by the enactment of the Monetary Authority (Administrative Fines) (Amendment) Regulations, 2020, amending Schedule 1 of the Monetary Authority (Administrative Fines) Regulations (2019 Revision) (which previously only applied to breaches of the Anti-Money Laundering Regulations (2020 Revision)) (the "AFR")¹.

The AFR now affords CIMA the ability to issue administrative fines for breaches committed by entities or individuals² of prescribed provisions of laws, regulations and rules regulated by CIMA.

This update provides a non-exhaustive overview of some of the most pertinent AFR fines applicable to Cayman Islands regulated investment funds and their operators.

Scope of the Administrative Fines Regime and Implementation Process by CIMA

By way of reminder, breaches are categorised as being 'minor', 'serious' or 'very serious'. The broad scope of the fines CIMA can impose under the AFR is determined by the categorisation of the offence. There is a sliding scale of fines from a non-discretionary fixed fine of CI\$5,000 for minor

breaches; up to CI\$50,000 for individuals and up to CI\$100,000 for entities for serious breaches; and up to CI\$100,000 for individuals and up to CI\$1 million for entities for very serious breaches.

CIMA will have six months from becoming aware of a minor breach, or having received information from which the fact of the breach can be reasonably inferred, to impose a fine. There is a two-year time limit in respect of the imposition of fines for serious or very serious breaches.

The AFR prescribes the process for provision of a breach notice by CIMA to a relevant party and affords 30 days to recipients to reply and to rectify a minor breach to CIMA's satisfaction. For minor breaches, if CIMA is not satisfied that the breach has been rectified, it is required to impose the fixed fine. Fines for ongoing minor breaches can also be applied at intervals on a continuing basis, up to a CI\$20,000 cap. For serious or very serious breaches, CIMA has the discretion whether to impose a fine, and in what amount, up to the cap for the relevant category. CIMA may also, but need not, negotiate with a party to attempt to reach a discount agreement with the party, whether or not CIMA has given a breach notice.

¹ See our previous update: CIMA Administrative Fines for Regulatory Laws, Regulations and Rules <https://maples.com/en/Knowledge-Centre/Industry-Updates/2020/07/CIMA-Administrative-Fines-for-Regulatory-Laws-Regulations-and-Rules>

² Where a breach is shown to have been committed with the consent, connivance, knowledge or neglect of the operator (i.e. director, general partner, trustee or managing member, as applicable) of a fund, that individual may also be subject to an administrative fine.

The AFR Application to Mutual Funds and Private Funds

While the AFR introduces new fines for failures to comply with prescribed registration, reporting and procedural requirements of the Mutual Funds Law (2020 Revision) and the Private Funds Law, 2020 (the "PFL") the underlying obligations and ongoing requirements of these laws remain unchanged, so these matters should not be new to operators of regulated investment funds in the Cayman Islands.

By way of non-exhaustive example, administrative fines may be brought against mutual funds and / or their operators for any of the following matters, all of which constitute a serious or very serious breach under the AFR:

- (a) Any attempt to carry on mutual funds business without being licenced by or registered with CIMA.
- (b) A licensed mutual fund's offering document must comply with CIMA's rule on the contents of offering documents³.
- (c) Failure of a mutual fund to inform CIMA of a change that materially affects any information (including changes to its offering document) previously submitted to CIMA within 21 days.
- (d) Failure by a mutual fund to have its accounts audited annually by an auditor approved by and submitted to CIMA within six months of the fund's financial year end.
- (e) Failure by a mutual fund to make an application to CIMA when the fund intends to cease to carry on, has ceased to carry on

business within 21 days from the date the fund ceased to carry on business, or before 31 December of the year the fund ceases to carry on business.

By way of non-exhaustive example, administrative fines may be brought against private funds and / or their operators for any of the following matters, all of which constitute a serious or very serious breach under the AFR:

- (a) Failure of an operator to ensure compliance with the PFL.
- (b) Failure of a private fund to register with CIMA within 21 days of accepting capital commitments or before accepting any capital contributions.
- (c) Failure of a private fund to inform CIMA of a change of registered office or that makes a change, or becomes aware of any change, that materially affects any information previously submitted to CIMA within 21 days.
- (d) Failure of a private fund to comply with the ongoing valuation, safekeeping and cash monitoring requirements of the PFL⁴.
- (e) Failure by a private fund to have its accounts audited annually by an auditor approved by and submitted to CIMA within six months of the private fund's financial year end.

³ See our previous update, New CIMA Rules for Registered Mutual Funds, which contains a summary of those Rules <https://maples.com/Knowledge-Centre/Industry-Updates/2020/11/New-CIMA-Rules-for-Registered-Mutual-Funds>

⁴ See our previous update, New CIMA Rules for Registered Private Funds, which contains a summary of those Rules <https://maples.com/Knowledge-Centre/Industry-Updates/2020/11/New-CIMA-Rules-for-Registered-Private-Funds>

Conclusion

The expansion of the AFR reflects the Cayman Islands commitment to promoting and maintaining a sound financial system with a proportionate regulatory overlay to the jurisdiction's existing laws and rules. The AFR is also a timely reminder for all operators of Cayman Islands regulated investment funds and their service providers to ensure that they are fully aware of and understand their regulatory obligations and to confirm that they maintain appropriate systems, procedures and controls to meet these requirements.

Further Assistance

The Maples Group Regulatory & Compliance team can assist by providing regulatory calendars, monthly or annual updates, reporting matrices and training.

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

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