

GIR KNOW HOW ANTI-MONEY LAUNDERING

Cayman Islands

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Money laundering

1. What laws in your jurisdiction prohibit money laundering?

The primary law prohibiting money laundering in the Cayman Islands is the Proceeds of Crime Act (As Revised) (the POCA). The POCA defines money laundering and establishes offences relating to money laundering. There are no state, provincial or local laws separate from national laws in the Cayman Islands.

Other laws that assist in combating money laundering or similar, such as proliferation or terrorist financing, include:

- The Terrorism Act (As Revised) treats entering into or becoming concerned in an arrangement that facilitates the retention or control of terrorist property, whether by concealment, removal from the jurisdiction or transfer to nominees, as a money laundering offence.
- The Proliferation Financing (Prohibition) Act (As Revised) treats (i) providing funds and economic resources to fund unauthorised proliferation activities, and (ii) entering into or becoming concerned in an arrangement that facilitates the acquisition, retention, use or control of funds and economic resources to fund unauthorised proliferation activities, as a money laundering offence.
- The Misuse of Drugs Act (As Revised) criminalises and addresses dealing with proceeds from drug trafficking.
- The Anti-Corruption Act (As Revised) provides that the provisions of the POCA shall apply in relation to the proceeds of a corruption offence.
- The Anti-Money Laundering Regulations (As Revised) (the Regulations) provide for the implementation of anti-money laundering procedures by persons engaged in “relevant financial business” (as defined under the POCA).

2. What must the government prove to establish a criminal violation of the money laundering laws?

Under the POCA, the government must prove that the property involved is “criminal property”. ‘Criminal property’ is defined by section 144(3) of the POCA, which states that property is criminal property if (a) it constitutes a person’s benefit from a criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and (b) the alleged offender knows or suspects that it constitutes or represents such a benefit, and includes terrorist property.

Further, the government must prove the remaining elements of the relevant offence. Section 144(10) of the POCA provides that money laundering is an act that:

- a. constitutes an offence under sections 133, 134 or 135. Section 133 makes it a money laundering offence if a person conceals, disguises, converts, transfers or removes ‘criminal property’. Section 134 makes it a money laundering offence if a person enters into or becomes concerned in an arrangement that person knows or suspects facilitates the acquisition, retention, use or control of ‘criminal property’. Section 135 makes it a money laundering offence for a person to acquire, use or have possession of ‘criminal property’;
- b. constitutes an attempt, conspiracy or incitement to commit an offence set out in sections 133, 134 or 135;
- c. constitutes aiding, abetting, counselling or procuring the commission of an offence specified in sections 133, 134 or 135; or
- d. would constitute an offence specified in paragraph (a), (b) or (c) above if done in the Cayman Islands.

The standard of proof is the criminal prosecution standard of proof (ie, beyond reasonable doubt).

3. What are the predicate offences to money laundering? Do they include foreign crimes and tax offences?

The POCA adopts a dual-criminality approach with respect to predicate offences to money laundering.

Sections 133, 134 and 135 define money laundering by references to actions taken in respect of “criminal property”. Where “criminal property” constitutes or represents a person’s benefit (in whole, part, directly or indirectly) from “criminal conduct” and the offender knows or suspects that it constitutes or represents such a benefit; and where “criminal conduct” covers any offence committed in the Cayman Islands or which would have constituted an offence if committed in the Cayman Islands (ie, a dual criminality test).

Predicate offences also include tax offences as set out in section 247A of the Penal Code (As Revised). That section provides that a person commits an offence if that person, with intent to defraud the government:

- wilfully makes, delivers or causes false or fraudulent information to be made to a person employed in the public service relating to the collection of money for the purposes of general revenue;
- wilfully omits information required to be provided to a person employed in the public services relating to the collection of money for the purposes of general revenue, where required by law; or
- wilfully obstructs, hinders, intimidates or resists a person employed in the public service in the collection of money for the purposes of general revenue.

4. Is there extraterritorial jurisdiction for violations of your jurisdiction’s money laundering laws?

No, although that does not mean actions that occur overseas are irrelevant. A Cayman Islands established or registered entity or legal arrangement can be held accountable for the actions of its officers, employees and agents that are overseas on the basis that entity or legal arrangement is within the Cayman Islands jurisdiction.

However, the authorities in the Cayman Islands cannot, in the ordinary course, enforce their authority outside of the jurisdiction. However, they can, and do, give and receive information and mutual legal assistance in relation to criminal matters from certain specific countries under the Criminal Justice (International Cooperation) Act (As Revised) and the Mutual Legal Assistance (United States of America) Act (As Revised). Such legal assistance can include taking and providing evidence, executing searches and seizures, examination of objects and sites, identifying or tracing proceeds or property, freezing criminal property, assisting with forfeiture and restitution and facilitating the voluntary transfer of witnesses.

5. Is there corporate criminal liability for money laundering offences, or is liability limited to individuals?

There is corporate criminal liability for money laundering offences under the POCA.

Section 142(1) of the POCA provides that:

‘Where an offence under this Part [Part V: Money Laundering and Other Criminal Conduct - Offences] is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity (however designated), the person committing the offence, as well as the body corporate, shall have committed that offence and shall be liable to be proceeded against and punished accordingly.’

Section 142(3) provides for criminal liability for partnerships and other unincorporated associations. It provides that:

‘Where an offence under this Part is committed by a partnership or by an unincorporated association other than a partnership, it is proved to have been committed with the consent or

connivance of, or is attributable to any neglect on the part of a partner in the partnership or a person concerned in the management or control of the association, he, as well as the partnership or association, shall have committed that offence and shall be liable to be proceeded against and punished accordingly.'

The Regulations also provide for corporate criminal liability for breaches of the regulations. Regulations 57(1) and 57(3) are worded similarly to sections 142(1) and 142(3) of the POCA.

The Anti-Corruption Act, Terrorism Act, Proliferation Financing (Prohibition) Act, Misuse of Drugs Act all contain similar language providing for corporate criminal liability.

6. Which government authorities are responsible for investigating violations of the money laundering laws?

The Cayman Islands Bureau of Financial Investigations (CIBFI) and the Financial Crime Investigations Unit (FCIU) are responsible for investigating money laundering offences generally. Both agencies fall under the Royal Cayman Islands Police Service. The CIBFI is responsible for investigating crimes within the international financial sector of the Cayman Islands, while the FCIU is responsible for investigating domestic financial crimes within the Cayman Islands, including tracing, freezing and recovering the proceeds of crime.

The Anti-Corruption Commission is given special powers to investigate bribery and corruption crimes.

7. Which government agencies are responsible for the prosecution of money laundering offences?

The Office of the Director of Public Prosecutions is responsible for all criminal proceedings brought within the Cayman Islands, including in relation to money laundering.

8. What is the statute of limitations for money laundering offences?

Section 141 of the POCA provides that a money laundering offence may be charged summarily or on indictment. There is no statutory limit in relation to an offence triable on indictment.

Section 78 of the Criminal Procedure Code provides that no offence, that is triable summarily, shall be triable by a Summary Court unless the charge or complaint relating to that offence is laid within six months from the date on which evidence sufficient to justify proceedings came to the actual or constructive knowledge of a competent complainant.

Fraud and deliberate concealment may extend the limitation period.

9. What are the penalties for a criminal violation of the money laundering laws?

Under section 141 of the POCA, a person who commits the offence of money laundering is liable:

- on summary conviction, to a fine of CI\$5,000 (approximately US\$6,100) or imprisonment for a term of two years, or to both; or
- on conviction on indictment, to imprisonment for a term of 14 years or to an unlimited fine, or to both.

10. Are there civil penalties for violations of the money laundering laws? What are they?

The POCA also allows for civil remedies. Section 77(1) provides that the Director of Public Prosecutions (the DPP) may bring proceedings before the court to recover property, which is, or represents, property obtained through unlawful conduct. It also allows for cash that is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a summary court.

The powers of the DPP in this regard may be used in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

11. Is asset forfeiture possible under the money laundering laws? Is it part of the criminal prosecution? What property is subject to forfeiture?

Part IV of the POCA – “Civil Recovery of the Proceeds, Etc., of Unlawful Conduct” allows under section 77 for (i) the DPP to recover, in civil proceedings before the court, property that is, or represents, property obtained through unlawful conduct, and (ii) cash that is, or represents, property obtained through unlawful conduct, or that is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a summary court.

Cash may also be forfeited under the POCA. Section 118 provides that while cash is detained, an application for the forfeiture of the whole or any part of it may be made to a summary court by the DPP. The court may order the forfeiture of the cash or any part of it if satisfied that the cash or part is “recoverable property” or that it is intended by any person for use in unlawful conduct. “Recoverable property” is defined in section 123 of the POCA as property obtained through unlawful conduct.

Section 27 of the Misuse of Drugs Act also allows for the forfeiture of cash that has been seized by a constable or customs officer where that cash directly or indirectly represents a person’s proceeds of drug trafficking or is intended by a person for use in drug trafficking.

Further, section 192(1) of the Criminal Procedure Code (As Revised) provides that:

“Any court may order the seizure of any property which there is reason to believe has been obtained by or is the proceeds or part of the proceeds of any offence, or into which the proceeds of any offence have been converted, and may direct that the same shall be kept or sold and that the same, or the proceeds thereof if sold, shall be held as such court directs until some person establishes a right thereto to the satisfaction of such court. If no person establishes such a right within twelve months from the date of seizure, the property or the proceeds thereof, shall vest in the Financial Secretary for the use of the Islands and shall be disposed of accordingly.”

12. Is civil or non-conviction-based asset forfeiture permitted under the money laundering laws? What property is subject to forfeiture?

Yes.

Section 77(1) of the POCA provides that the DPP may bring proceedings before the court to recover property, which is, or represents, property obtained through unlawful conduct. It also allows for cash that is, or represents property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a summary court. Importantly, the powers of the DPP in this regard may be used in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

Further, under 144 of the POCA, money laundering is directly linked to activities involving criminal property. Under section 144(4) it is immaterial who carried out the criminal conduct or who benefited from it. English case law (R v Anwoir [2008] EWCA Crim 1354), which would be persuasive to the Cayman Islands court, has made it clear that there are two ways in which it can be shown that property derives from crime: “(a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime.” Thus, a conviction is not necessary for there to be a determination that property is criminal property.

Anti-money laundering

13. Which laws or regulations in your jurisdiction impose anti-money laundering compliance requirements on financial institutions and other businesses?

The Regulations prescribe measures to be taken to prevent the use of the financial system for the purposes of money laundering and terrorist/proliferation financing. The Regulations require relevant financial businesses, as defined in POCA, to have in place Anti-Money Laundering (AML) or Combating the Financing of Terrorism (CFT)/Proliferation Financing (PF) policies and procedures for:

- customer due diligence;
- recordkeeping;
- implementing a risk-based approach;
- ongoing monitoring;
- complying with lists of targeted financial sanctions;
- internal reporting of suspicious activities;
- staff screening;
- staff training;
- internal controls;
- appointment of AML officers; and
- internal and external reporting.

More detailed compliance requirements for financial institution are found in the Cayman Islands Monetary Authority's Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands (the Guidance Notes).

14. What types of institutions are subject to the AML rules?

The Regulations apply to anyone carrying out "relevant financial business in or from the Cayman Islands", forming a business relationship, or carrying out a one-off transaction. What constitutes "relevant financial business" is set out under section 2 and Schedule 6 of the PCA, which include the following:

- banking or trust business carried on by a person who is licensed under the Banks and Trust Companies Act (As Revised);
- acceptance by a building society of deposits (including the raising of money from members of the society by the issue of shares);
- business carried on by a co-operative society within the meaning of the Co-operative Societies Act (As Revised);
- insurance business and the business of an insurance manager, an insurance agent, or an insurance broker within the meaning of the Insurance Act (As Revised);
- mutual fund administration or the business of a regulated mutual fund within the meaning of the Mutual Funds Act (As Revised); and
- company management business as defined by the Companies Management Act (As Revised).

Further activities constituting "relevant financial business" are set out in Schedule 6 to the PCA. These largely replicate the activities set out in the definition of "financial institutions" in the FATF Recommendations.

Additionally, certain "Designated Non-Financial Business and Professions" (DNFBPs) are subject to the requirements of the Department of Commerce & Investment (the DCI), law firms are subject to the requirements of Cayman Islands Attorney Regulation Authority (CARA) and the Cayman Island Legal Practitioners Association (CILPA) and accounting firms are subject to the requirements of Cayman

Islands Institute of Professional Accountants (CIIPA). For example, the DCI has issued its own separate guidance notes applicable to real estate and dealers in precious metals and stones.

Gambling in the Cayman Islands is illegal and, as such, there are no regulatory requirements on it beyond its prohibition.

15. Must payment services and money transmitters be licensed in your jurisdiction? Are payment services and money transmitters subject to the AML rules and compliance requirements?

Yes, pursuant to the Money Services Act (As Revised) any person who carries on money services business without first obtaining a licence from the Authority will have committed an offence. This applies to anyone conducting a “money services business”, which is the business of providing, in or from within the Cayman Islands, either money transmission; cheque cashing; currency exchange; the issuance, sale or redemption of money orders or travellers cheques; and such other services as the Cayman Islands’ Cabinet may specify by notice published in the Gazette. The Act also provides that a licensee and any sub-agent of the licensee will have to take the necessary steps to comply with the Regulations.

16. Are digital assets subject to the AML rules and compliance requirements?

Yes, with limited exceptions. The Virtual Asset Services Act (As Revised) requires virtual asset service providers (VASP) Licensees and Registered Persons to comply with the Regulations and other laws relating to the combating of money laundering, terrorist financing and proliferation financing, which includes putting in place AML systems and procedures and designating an employee as the officer with responsibility for the procedures for combating money laundering, terrorist financing and proliferation financing.

17. What are the specific AML compliance requirements for covered institutions?

A financial services provider, carrying out relevant financial business in or from the Cayman Islands, cannot form a business relationship or carry out a one-off transaction, with or for another person unless they maintain the following AML/CFT/CPF procedures as appropriate, having regard to money laundering and terrorist financing risks and the size of the business, including:

- the identification and verification (KYC and due diligence) of the applicants for business of the entity, and where applicable and required, the beneficial owners, controlling persons and authorised persons acting on behalf of such applicants for business (customers);
- the adoption of a risk-based approach to identify, assess and determine the level of money laundering and terrorist financing risks in relation to the customers (including for the purpose of assessing whether simplified, standard or enhanced due diligence is required) and the business relationship, including procedures for forming the business relationship prior to verification;
- record keeping in relation to the identification and verification of customers of the entity and transactions effected, including business records and account files;
- internal controls and communication for the ongoing monitoring of business relationships with Customers of the entity, including sanctions and non-compliant jurisdiction checks, and an internal audit function to assess and test the procedures;
- designation of an Anti-Money Laundering Compliance Officer to develop and maintain the procedures and liaise with the relevant authorities;
- reporting of suspicious activity and the appointment of a Money Laundering Reporting Officer (and deputy where appropriate);
- risk-screening of employees; and
- training employees and making them aware of the procedures and AML Regime.

18. Are there different AML compliance requirements for different types of institutions?

Yes, the requirements for different institutions can vary slightly due to the manner in which applicable regulatory laws differ in content and because there is sector specific guidance provided in the Guidance Notes for the following institutions:

- banks and other deposit taking financial institutions;
- fiduciary institutions such as trusts and company formation/management;
- insurance businesses and managers;
- mutual funds and mutual funds administrators;
- money services business;
- securities investment business; and
- virtual asset service providers.

Additionally, DNFBPs must be mindful of sector specific guidance issued by their applicable regulators.

19. Which government authorities are responsible for the examination and enforcement of compliance with the AML rules?

The Cayman Islands Monetary Authority (CIMA) supervises and enforces the Cayman Islands AML/CFT/PF regime in the financial services sector. Section 6(1)(b)(ii) of the Monetary Authority Act gives CIMA legal responsibility, as part of its regulatory function, “to monitor compliance with the AML regulations”.

The FRA is the Cayman Islands’ Financial Intelligence Unit (FIU) responsible for receiving, requesting, analysing and disseminating financial information disclosures relating to AML/CFT/PF.

The DCI is the designated supervisory body for DNFBPs in relation to AML/CFT/PF.

Additionally, it is worth noting that:

- the Cayman Islands Regulation Authority, a committee of Cayman Islands Legal Practitioners Association, supervises the legal sector in relation to AML/CFT/PF; and
- the Cayman Islands Institute of Professional Accountants supervises accounting firms in relation to AML/CFT/PF.

20. Are there requirements to monitor and report suspicious activity? What are the factors that trigger the requirement to report suspicious activity? What is the process for reporting suspicious activity?

Yes, there are requirements. The responsibility lies with all persons involved in the business that is in scope of the AML regime, although an entity’s MLRO is there to receive internal reports of suspicious activity.

The MLRO, who is autonomous and independent, shall determine whether a disclosure (“suspicious activity report”) needs to be made to the FRA, once they have assessed all the relevant material in relation to the activity. The role may be delegated outside of the financial service provider, however the MLRO needs to have sufficient knowledge of the business and access to records in order to be able to perform their duties. The Regulations also require the designation of a deputy MLRO to cover for the absence or unavailability of the MLRO.

The factors that trigger the requirement to report the suspicious activity are set out in section 136 of POCA whereby a person commits an offence if:

- he or she knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct;
- the information on which that person’s knowledge or suspicion is based came to that person in the course of a business;
- he or she does not make the required disclosure to a nominated officer, or the Financial Reporting Authority, as soon as is practicable after the information comes to that person; and
- the required disclosure is a disclosure of:

- i. the identity of the person who may be involved in money laundering, if that person knows it;
- ii. information or other matter in the form and manner prescribed by regulations to this Act or the prior Act;
- iii. the whereabouts of the property with respect to which the criminal conduct is committed, if the person knows it; and
- iv. the information mentioned in paragraph (b), or prescribed under section 201 of POCA.

21. Are there confidentiality requirements associated with the reporting of suspicious activity? What are the requirements? Who do the confidentiality requirements apply to? Are there penalties for violations of the confidentiality requirements?

Section 139 of POCA provides that a person commits an offence if he or she knows or suspects that an activity in relation to which a disclosure is required to be made is about to take place, is taking place or has taken place (whether or not a disclosure has been or is likely to be made in relation thereto) and he or she makes a disclosure that is likely to prejudice any investigation that might be conducted following such disclosure (whether or not such investigation is conducted). This is referred to as a “tipping off” offence.

The offence of tipping off is not made out where the disclosure of the information was done in accordance with information sharing obligations under a financial group’s group-wide programmes against money laundering and terrorist financing or the disclosure is made in carrying out a function he or she has relating to the enforcement of the law.

A person guilty of failing to disclose or tipping off is liable on summary conviction to a fine of CI\$5,000 (approximately US\$6,100) or to imprisonment for a term of two years or both. On conviction on indictment for such offences the maximum penalty is a term of five years imprisonment, an unlimited fine or both.

Additionally, although broader in scope than AML and beyond the scope of this article, the Cayman Islands has laws pertaining to personal data and confidential information that can be important to consider. Typically, terms and conditions of financial services business are drafted in such a way as to protect financial services providers from legal risks associated with disclosing confidential information or personal data for regulatory compliance purposes.

22. Are there requirements for reporting large currency transactions? Who must file the reports, and what is the threshold?

Relevant financial service providers have to take a risk-based approach to AML and so must consider whether unusual or large transactions present higher risks.

The AML (Money Services Business Threshold Reporting) Regulations 2020 require money services businesses to report to the FRA specific details for “threshold transactions”, meaning where the total amount of money transferred exceeds US\$3,500 in a single transaction; or in the aggregate where there is more than one transfer of funds within, into or out of the Cayman Islands by the same sender or receiver, within a period of one month.

The AML (Class A and Class B Bank Threshold Reporting) Regulations, 2022 require banks to provide to the FRA a report on a monthly basis in respect of all “threshold transfers”, meaning a single wire transfer sent or received by the bank where the total amount of money transferred is equal to or exceeds US\$100,000.

23. Are there reporting requirements for cross-border transactions? Who is subject to the requirements and what must be reported?

Relevant financial service providers have to take a risk-based approach to AML and so must consider country risk, and transfers to/from certain jurisdictions can present higher risks.

The AML (Money Services Business Threshold Reporting) Regulations, 2020 require money services businesses to report to the FRA specific details for “threshold transactions”, meaning where the total of amount of money transferred exceeds US\$3,500 in a single transaction; or in the aggregate where there is more than one transfer of funds within, into or out of the Islands by the same sender or receiver, within a period of one month.

The AML (Class A and Class B Bank Threshold Reporting) Regulations, 2022 require banks to provide to the FRA a report on a monthly basis in respect of all “threshold transfers”, meaning a single wire transfer sent or received by the bank where the total amount of money transferred is equal to or exceeds US\$100,000.

24. Is there a financial intelligence unit (FIU) or other government agency responsible for analysing the information reported under the AML rules?

The FRA is the Cayman Islands’ FIU.

25. What are the penalties for failing to comply with your jurisdiction’s AML rules, and are they civil or criminal?

Under section 141 of the POCA, a person who commits the offence of money laundering is liable:

- on summary conviction, to a fine of CI\$5,000 (approximately US\$6,100) or imprisonment for a term of two years, or to both; or
- on conviction on indictment, to imprisonment for a term of 14 years or to an unlimited fine, or to both.

Part VIA of the Monetary Authority Act (As Revised) (the MAA) gives the CIMA the power to impose administrative fines (the Administrative Fines Regime or AFR) for breaches committed by persons (entities and individuals) of provisions prescribed under the MAA, a “regulatory law” (as defined under the MAA) or the Regulations.

Breaches of prescribed provisions are categorised as being “minor”, “serious” or “very serious” under the AFR. The broad scope of the fines that CIMA can impose under the AFR is determined by the categorisation of the offending breach. There is a sliding scale of fines from a non-discretionary fixed fine of CI\$5,000 (approximately US\$6,100) for minor breaches; up to CI\$50,000 (approximately US\$60,975) for individuals and up to CI\$100,000 (approximately US\$121,951) for entities for “serious” breaches; and up to CI\$100,000 (approximately US\$121,951) for individuals and up to CI\$1 million (approximately US\$1.2 million) for entities for “very serious” breaches.

26. Are compliance personnel subject to the AML rules? Can an enforcement action be brought against an individual for violations?

Yes. For instance, subject to certain defences, an MLRO commits an offence if they fail to make required disclosure to the FRA when they know or suspect or have reasonable grounds for knowing or suspecting that another person is engaged in a criminal conduct. Also, by way of example, administrative fines under the AFR may be levied against individuals.

27. What is the statute of limitations for violations of the AML rules?

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.

28. Does your jurisdiction have a beneficial ownership registry or an entity or office that collects information on the beneficial ownership of legal entities?

Yes. The Cayman Islands has a beneficial ownership regime (BOR) that governs the collection, maintenance and sharing (within strict limitations) of information regarding the ultimate beneficial ownership or control of Cayman Islands companies and limited liability companies. The BOR is incorporated into the Companies Act (As Revised) (the Companies Act) and the Limited Liability Companies Act (As Revised) (the LLC Act). Additional regulations include The Beneficial Ownership (Companies) Regulations (As Revised) (the Company Regulations and The Beneficial Ownership (Limited Liability Companies) Regulations (As Revised).

Each company or LLC that is in scope of the BOR has to take “reasonable steps” to identify its beneficial owners and certain intermediate holding companies (referred to as a “relevant legal entity”) and to maintain a BOR at its registered office in the Cayman Islands with a licensed and regulated corporate service provider (a CSP).

Each in scope entity has to record specified details on registrable persons in a BOR maintained at its Cayman Islands registered office by a CSP.

CSPs must facilitate access to certain information extracted from the BOR (together with certain information pertaining to Exempted Entities) through a confidential digital search platform (the Beneficial Ownership Digital Search or BODS) operated by a competent authority designated by the Cayman Islands government (the Competent Authority).

The information will not be held on a central register by either the Cayman Islands government or the Competent Authority, nor will it be publicly accessible or searchable. Only certain Cayman and UK authorities currently have rights to request information through a search of BODS carried out by the Competent Authority on an individual (and not automatic) request basis only. The Cayman Islands has committed to introducing public registers of beneficial ownership information once it becomes the international standard.

Any entity that breaches the beneficial ownership provisions, will be subject to administrative fines and potential criminal liability. A breach of the provisions will attract an initial fine of CI\$5,000 (approximately US\$6,100). If the breach continues a further fine of CI\$1,000 (approximately US\$1,219) per month can be imposed, up to a maximum of CI\$25,000 (approximately US\$30,488). The fines are imposed by the Cayman Islands Registrar of Companies and under the Acts have a limitation period of six months from the date that the Registrar became aware of the occurrence of the breach.

In addition to liability of administrative fines, any entity can be criminally liable for the following offences under the Companies Act and LLC Act:

- failure to comply duty to give notice to registerable persons;
- failure to provide registerable persons information within the time required; and
- conducting an unlawful search of an entity’s BOR or discloses beneficial ownership information.

An entity that commits any of the above offences can be liable on conviction on indictment to a term of two years’ imprisonment or on a summary conviction to a term of 12 months’ imprisonment. Section 78 of the Criminal Procedure Code provides that except where a longer time is allowed by the law, no offence, which is triable summarily, shall be triable by a Summary Court unless the charge or complaint relating to that offence is laid within six months from the date on which evidence sufficient to justify proceedings came to the actual or constructive knowledge of a competent complainant. However, there is no statutory limitation for an indictable offence in this respect.



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Christopher is head of the Cayman Islands regulatory & financial services team at Maples and Calder, the Maples Group's law firm. His practice focuses on regulatory matters impacting asset managers, investment funds (both open and closed-ended), banks, administrators, family offices and high net worth individuals. Christopher regularly advises clients on a wide range of regulatory matters including FATCA, CRS, the Securities Investment Business Law, DAC6/MDR, anti-money laundering and terrorist financing, Economic Substance, cross-border conduct of business advice and the OECD Country-by-Country Reporting regime.



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Adam is a partner in the Cayman Islands regulatory & financial services and dispute resolution & insolvency teams at Maples and Calder, the Maples Group's law firm. Adam regularly represents retail and investment banks, trustees, investment funds and other financial institutions. He has a broad range of litigation experience, with an emphasis on complex, multi-jurisdictional matters involving banking, finance, investment funds, company law and trusts disputes. Adam's regulatory practice has a particular focus on economic sanctions, but also includes advising on cross-border conduct of business, duties of confidentiality, anti-corruption and bribery, licensing, record retention and mandatory reporting and information exchange. He regularly appears in the Grand Court and Court of Appeal of the Cayman Islands.



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Maples Group

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