

## Campbells Regulatory Update – Q4 2022

31 December 2022

This Update provides an overview of the main legal developments in the Cayman Islands and the British Virgin Islands (“**BVI**”) over the last quarter.

For further information please get in touch with your usual Campbells contact or one of the contacts provided at the end of this Update.



# Cayman Islands

## 1. Limited Liability Companies (Amendment) Act, 2022

On 19 October 2022, the Limited Liability Companies (Amendment) Act, 2022 came into force. The purpose of the Amendment is to clarify that existing limited liability companies would no longer have to file a certificate of amendment on membership changes with the Companies Registrar. The Amendment also would require limited liability companies to maintain, at their registered offices, the names and addresses of their members in their register of members, and the nature of their voting rights; and to provide this information upon demand to the Companies Registrar.

## 2. The Russia (Sanctions) (Overseas Territories) (Amendment) (No.3) Order 2022

On 11 November 2022, the Russia (Sanctions) (Overseas Territories) (Amendment) (No.3) Order, 2022 was gazetted and made in exercise of legislative powers under the Sanctions and Anti-Money Laundering Act 2018. It amends the Russia (Sanctions) (Overseas Territories) Order 2020, to give effect in the relevant British overseas territories (including the Cayman Islands and the BVI) to the changes made to the Russia sanctions regime by the Russia (Sanctions) (EU Exit) (Amendment) (No. 11) Regulations 2022, Russia (Sanctions) (EU Exit) (Amendment) (No. 12) Regulations 2022, Russia (Sanctions) (EU Exit) (Amendment) (No. 13) Regulations 2022 and the Russia (Sanctions) (EU Exit) (Amendment) (No. 14) Regulations. It came into force on 10 November 2022.

## 3. Proceeds of Crime (Amendment of Schedule 1) Order, 2022

On 20 December 2022, the Proceeds of Crime (Amendment of Schedule 1) Order, 2022 was gazetted which now includes various gambling offences (under the Gambling Act (2016 Revision)) as lifestyle offences in Schedule 1 of the Proceeds of Crime Act (2020 Revision).

## 4. Anti-Corruption (Amendment) Act, 2022

On 29 December 2022, the Anti-Corruption (Amendment) Act, 2022 was gazetted (not yet in force) which amends the Anti-Corruption Act (2019 Revision) in order to designate the Anti-Corruption Commission as a law enforcement agency in the Cayman Islands, to confer additional powers on investigating officers and to clarify the circumstances in which the Commission shall investigate reports.

## 5. Cayman Islands Monetary Authority (“CIMA”) – Regulatory Policies

In November 2022, CIMA published two regulatory policies: (i) [Regulatory Policy: Complaints against the Authority](#) and (ii) [Regulatory Policy – Complaints against Supervised Entities](#).

The first policy establishes the main criteria and approach for submitting complaints against CIMA. Broadly the following criteria must be met when making a complaint.

- (i) complaints must be submitted in writing;
- (ii) complaints must include the name of the complainant; and
- (iii) complaints must include the contact details of the complainant.

It is the responsibility of the complainant to (i) satisfy criteria established within the Policy; (ii) provide any information requested; (iii) provide any relevant documents or evidence; (iv) contact CIMA to seek clarification of the process, if required; and (v) request an internal review of a complaint outcome.

Complaints should provide a clear description and specifics about the nature of the complaint, in addition to the expected outcome being requested by the complainant. All complains should be accompanied by all relevant supporting documents.

Table II of the policy sets out the Complaints Handling Stages and timing.

The second policy establishes the criteria for submission of complaints to CIMA and a process by which complaints against licensees, registrants and other supervised entities will be dealt with by CIMA. The policy broadly provides, in respect of general considerations:

- (i) if a complainant has a complaint against a supervised entity, the matter should first be raised with the entity. CIMA expects all supervised entities to have satisfactory systems and controls in place to enable them to deal with customer complaints in a thorough and prompt manner.
- (ii) CIMA will request proof from the complainant that they have taken reasonable steps to resolve the complaint with the supervised entity before considering any complaint submitted to CIMA.
- (iii) CIMA is not empowered to arbitrate in complaints about supervised entities, or to compel an entity to pay compensation to a customer in relation to an individual complaint.

Complaints must be submitted in writing; must include the name of the complainant; and must include the contact details of the complainant.

CIMA will generally not consider a complaint if it is received after one year from the date on which the complainant became aware or ought reasonably to have become aware, that he/she had cause for complaint. Section 9 of the policy sets out the Complaints Handling Process.

## 6. CIMA – List of Approved Stock Exchanges

In November 2022 CIMA published an updated List of Approved Stock Exchanges<sup>1</sup> as approved CIMA for the purposes of various regulatory acts.

## 7. CIMA Consultations

On 16 December 2022, CIMA published the following public consultations, the closing deadlines for which are 1 February 2023:

### A. Rule and Regulatory Policy on Domestic Systemically Important Deposit Taking Institutions

In November 2011, the Basel Committee on Banking Supervision (“**BCBS**”) issued Global systemically important banks: assessment methodology and the additional loss absorbency requirement, which sets out the framework for identifying and supervising global systemically important banks (the “**BCBS G-SIB Framework**”). The BCBS G-SIB Framework introduced Higher Loss Absorbency Requirement (“**HLA Requirement**”) for global systemically important banks (“**G-SIBs**”) as a means of reducing their risk of failure by applying a prescriptive approach to increasing their capacity to absorb losses.

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<sup>1</sup> Available at <http://gazettes.gov.ky/portal/pls/portal/docs/1/13218574.PDF>.  
Please cut and paste the link into your internet browser.

Subsequently, in October 2012, the BCBS issued the framework for dealing with Domestic Systemically Important Banks (the "**BCBS D-SIB Framework**"). The BCBS DSIB Framework is complementary to the BCBS G-SIB Framework and focuses on the impact that the failure or distress of a bank may have on a jurisdiction's domestic financial system and/or real economy. Under the BCBS D-SIB Framework, national authorities are responsible for establishing a methodology for assessing the degree to which banks are systemically important to the domestic economy and calibrating the level of HLA Requirement. They are also responsible for setting any other expectations to address the risks posed by such institutions. Unlike the G-SIBs Framework, the BCBS D-SIB Framework adopts a principles-based approach which allows for national discretion in establishing the assessment methodology for identifying domestic-systemically important institutions; and in calibrating the HLA Requirement.

The Regulatory Policy on Domestic Systemically Important Deposit Taking Institutions sets out, among others, CIMA's assessment methodology and supervisory expectations for deposit taking institutions identified as being domestic systemically important. The Rule on Domestic Systemically Important Deposit Taking Institutions sets out, among others, the regulatory obligations for institutions identified as being domestic systemically important.

### **B. Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands – Amendments to Guidance Notes – e-KYC and Remote CDD / Ongoing Monitoring**

Regulations 12(1)(a) of the Anti-Money Laundering Regulations, 2020 ("**AMLRs**") and section 4A3(1) of the Guidance Notes require the verification of a customer's identity to be done using "reliable, independent, source documents, data or information", and does not prescribe the manner in which this should be done. However, during the COVID-19 pandemic in 2020, CIMA issued an advisory which provided for alternative ways to verify information (both at the time of establishing relationships and/or as part of ongoing customer due diligence) whilst observing curfew, social distancing or self-isolation. The Advisory also included the statement "Where a regulated entity has adopted a deviated verification method, it should complete the verification using normal processes as soon as practicable". There was no definition of what constituted "normal processes", just that it referred to measures which were outside of the regulated entity's standard procedures. This suggested that remote/virtual/non-face-to-face onboarding and ongoing CDD was not standard practice, firstly through the advisory "allowing" regulated entities to use such procedures in light of COVID-19, and subsequently the directive to revert to "normal processes".

The 2020 advisory published by CIMA suggested that regulated entities could use virtual means of verification to address the needs of covid-related social distancing but should "complete the verification using normal processes as soon as practicable". This placed a potentially onerous task on the industry to go back and obtain documentation for all clients onboarded during lockdown. The purpose of the proposed guidance notes is to remove any ambiguity on whether the use of technological solutions for remote/virtual/non-face-to-face CDD is permitted beyond the context of COVID-19 and clarify that financial service providers ("**FSPs**") need only conduct further verification on a risk-based approach, on a case-by-case basis, dependent on the risk factors and scenarios presented.

### **C. Rules and Statements of Guidance on Reinsurance Arrangements**

CIMA, in 2003, issued a Statement of Guidance on Reinsurance Arrangements – Class A Insurers. However, reinsurance arrangements have evolved over time.

In 2010, the Insurance Act was extensively revised based on recommendations from the International Monetary Fund following their 2009 review of the jurisdiction. Two new categories of insurance licences were added: Class C's and Class D's.

In 2017, the International Association of Insurance Supervisors revised and updated its insurance core principle on Reinsurance and Other Forms of Risk Transfer. While the jurisdiction was previously rated as "Compliant", amending and strengthening the current regulatory measure is a crucial component of CIMA's supervisory oversight of the reinsurance sector. CIMA has flagged several challenges with some insurers and reinsurers which require the measure to be updated to rules to ensure enforceability.

CIMA has found that in some cases, reinsurance strategies are deficient, lacking identification, implementation, and monitoring of main risks and considerations. Furthermore, some risk transfer arrangements are inadequate, exposing the insurer/reinsurer to money laundering, terrorist financing, and/or proliferation financing (“**ML/TF/PF**”) issues. Given that the jurisdiction’s National Risk Assessment assessed the Cayman Islands’ insurance sector as having “Low-Medium” level of vulnerability to ML/TF/PF, a robust regulatory measure is required to help mitigate the risks to the sector. Subsequently, CIMA issued a proposed Rules and SOG – Reinsurance Arrangements for consultation in November 2021. Following feedback received from the consultation, CIMA has revised the Rules and SOG and determined that given the magnitude of revisions, it was best to reconsult. Therefore, the Rules and SOG were amended to address the main issues raised by the private sector associations, particularly concerns regarding the applicability of some elements of the Rules and SOG to Class B(i) and Class B(ii) insurers.

## 8. Regulatory Calendar

Please click [here](#) to access Campbells 2023 Cayman Islands Key Annual Dates Calendar (which provides key regulatory filing dates for clients).

## British Virgin Islands (BVI)

### 1. BVI Business Companies (Amendment of Schedule 1) (No.2) Order, 2022

The Order was gazetted on 6 October 2022 and, effective 1 January 2023, makes various regulatory changes to fees payable under the recently amended BVI Business Companies Act. This includes the incorporation fees payable to the Registrar of Corporate Affairs.

### 2. Insolvency (Amendment) Act, 2022

On 29 December 2022, the Insolvency (Amendment) Act, 2022 was gazetted (not yet in force). The amendments are designed to (i) enable the Virgin Islands Deposit Insurance Corporation to make an application to the High Court to appoint an eligible insolvency practitioner as a liquidator of a regulated person that is a bank; (ii) to formally transfer the Office of the Official Receiver from the Financial Services Commission (the “Commission”) to the Government; and (iii) to empower the Commission, upon receipt of an insolvency practitioner’s licence, to cancel the licence (as opposed to revoking it).

### 3. Banks and Trust Companies (Amendment) Act, 2022

On 29 December 2022, the Banks and Trust Companies (Amendment) Act, 2022 was gazetted (not yet in force). It empowers the Commission, as part of the process of ensuring financial stability and effectively safeguarding the BVI’s economic perimeter, to designate a bank as a systemically important bank. These measures are designed to ensure efficiency and effectiveness in properly handling any crisis that may arise in relation to a licensed bank which has the potential to lead to the failure of such bank. It also introduces a new obligation whereby a licensee who receives an audit report that is qualified or contains any emphasis of a matter within the report, to immediately notify the Commission of that fact. This will enable the Commission to take an early review of the audit report for purposes of assessing risk or any related matter.

## 4. Financial Services Commission (Amendment) Act, 2022

On 29 December 2022, the Financial Services Commission (Amendment) Act, 2022 was gazetted (not yet in force). The principal aim of the Amendment is to expand the functions of the Commission to promote financial stability and empower it to issue disqualification orders against directors and other senior officers of entities operating under financial services legislation.

In addition, the Amendment empowers the Commission to initiate and undertake resolution proceedings against any licensee that is in a financial distress.

Furthermore, the Amendment requires the Commission to establish a register of directors and senior officers of licensees and grants powers to the Commission in relation to disqualifying such directors and senior officers for misbehaviour considered not to be compatible with the conduct of financial services business. In that context, the Commission is required to establish a register of disqualified persons.

Provision is also made with regard to maintaining compliance inspection reports confidentially and empowering the Commission to determine the frequency at which compliance inspections of licensees should be conducted.

The Amendment also introduces the concept of a rehabilitator. This is a person that the Commission may appoint to take over and direct the affairs of a licensee in circumstances where the licensee is in some form of financial distress but without the need for initiating and undertaking resolution proceedings against the licensee.

The Amendment places an obligation on a licensee, in addition to notifying the Commission of any fraud that may have been committed by its employee in relation to the licensee's customer (as is the current law), to also notify the customer of such fraud and advise on the steps being taken to address the fraud, including the measures put or to be put in place to prevent a recurrence of the fraud.

## 5. Virtual Asset Services Providers Act, 2022

On 29 December 2022, the Virtual Asset Service Providers Act, 2022 was gazetted (not yet in force). Please see our client advisory available [here](#) for further information on the Act.

## Key Contacts



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