

# LEGAL UPDATE

## Undertaking Voluntary Liquidations of Cayman Islands' Entities prior to 31 December 2020 and New Administrative Fines for breach of Regulatory Laws

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### Voluntary liquidations generally

As the conclusion of 2020 approaches, it is time for persons with Cayman Islands companies and/or limited partnerships to give some thought to whether or not they have Cayman entities which they are no longer using and wish to liquidate prior to the end of 2020 in order to, among other things, avoid annual government registration fees due in January 2021 and in some cases, administrative fines. A voluntary liquidator of a Cayman company or exempted limited partnership (ELP) is required to hold the final general meeting for that company or file the final dissolution notice for that ELP on or before 31 January 2021.

### Voluntary liquidations – Funds registered with CIMA

Investment Funds which are registered with the Cayman Islands Monetary Authority (CIMA) should commence voluntary liquidation and submit documents to CIMA in order to have those Funds' status change from "active" to "license under liquidation" by 31 December 2020 if they are to avoid their annual fees payable to CIMA for 2021. It is also important for investment funds (including private funds) registered with CIMA to give some thought to CIMA's requirement for a final "stub" audit for the period of 2020 in respect of which the Fund operated before going into liquidation. There are a limited number of circumstances in which CIMA will grant a partial year audit waiver for a liquidating Fund.

As an alternative to voluntary liquidation, some investment fund managers might be considering a wind down of one or more CIMA registered funds prior to the end 2020 and wish to de-register from CIMA or at least go into the status of "licence under termination" with CIMA in order to avoid or reduce annual registration fees payable to CIMA for 2021. If not already started, we recommend that action be taken now to begin this process.

### New Administrative Fines for breach of Regulatory Laws

As previously reported, the Monetary Authority Law gives CIMA the power to impose administrative fines under the Monetary Authority (Administrative Fines) Regulations (2019 Revision) as amended for breaches committed by persons (entities and individuals), under the following laws (and associated regulations and rules):

- a. Anti-Money Laundering Regulations (2020 Revision) (as amended)
- b. Banks and Trust Companies Law (2020 Revision) (as amended)
- c. Companies Management Law (2018 Revision) (as amended)
- d. Directors Registration and Licensing Law, 2014 (as amended)

- e. Insurance Law, 2010 (as amended)
- f. Money Services Law (2020 Revision)
- g. Mutual Funds Law (2020 Revision) (as amended)
- h. Private Funds Law, 2020 (as amended)
- i. Securities Investment Business Law (2020 Revision) (as amended).

Breaches fall into three (3) categories: (1) “minor”, (2) “serious” or (3) “very serious”. The process involves the issuance of a breach notice to a relevant party followed by a thirty (30) days opportunity to reply to the breach notice and to rectify a 'minor' breach to CIMA's satisfaction. If CIMA is not satisfied that a minor breach has been rectified, it is required to impose a fine. 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.

Category of breach	Cayman Dollars	US Dollars
Minor	CI\$5,000	US\$6,100
Serious (individual)	CI\$50,000	US\$61,000
Serious (corporate)	CI\$100,000	US\$122,000
Very Serious (individual)	CI\$100,000	US\$122,000
Very Serious (corporate)	CI\$1,000,000	US\$1,220,000

As shown in the table above, there is a sliding scale of fines from CI\$5,000 for minor breaches to CI\$100,000 for individuals and CI\$1 million for entities for very serious breaches. Fines for ongoing minor breaches can be applied at intervals on a continuing basis, up to a CI\$20,000 (US\$24,400) cap.

CIMA will have six (6) 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 (2) year time limit in respect of the imposition of fines for serious or very serious breaches.

Accordingly, in addition to considering voluntary liquidations during the rest of 2020, it is important that all entities regulated under the above listed laws become aware of and comply with all filing deadlines for the rest of 2020 going into 2021, ongoing notification obligations and maintain appropriate systems and controls in accordance with applicable regulatory laws and CIMA guidance issued from time to time.

***For specific advice on voluntary liquidations of Cayman Islands' entities or winding down investment funds before 31 December 2020 and compliance with regulatory laws in order to avoid the risk of imposition of administrative fines, please contact any of:***

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