

LEGAL UPDATE

New Enforcement Powers for CIMA to impose Administrative Fines on Cayman Islands' Regulated Funds and Investment Managers are now in Force.

Introduction

The Monetary Authority (Amendment) Law, 2016 (the "**Amendment Law**") which was enacted near the end of 2016 but only came into force on 15th December 2017 gives the Cayman Islands Monetary Authority ("**CIMA**") the power to impose administrative fines for non-compliance on entities and individuals who are subject to Cayman Islands regulatory laws (e.g. the Mutual Funds Law, the Securities Investment Business Law, and the Directors Registration and Licensing Law) and/or the Anti-Money Laundering Regulations, 2017 ("**AML Regulations**").

Persons Affected

CIMA's new powers to impose administrative fines for breach of, or non-compliance with, regulatory laws and/or the AML Regulations will cover, among others:

- i. investment funds registered with CIMA;
- ii. investment management/advisory companies registered with CIMA (including those registered as an "*Excluded Person*" under the Securities Investment Business Law);
- iii. individuals who are Directors of entities covered under i. and ii. above (irrespective of whether or not the Director is resident in the Cayman Islands) and are registered with CIMA.

Types of Fines

For a breach prescribed as minor, the fine will be CI\$5,000 (approx. US\$6,000). For a breach prescribed as major, CIMA also has the power to impose one or more continuing fines of CI\$5,000 each for a fine already imposed for the breach (the "**initial fine**") at intervals it decides, until the earliest of the following to happen:

- (a) the breach stops or is remedied;
- (b) payment of the initial fine and all continuing fines imposed for the breach; or
- (c) the total of the initial fine and all continuing fines for the breach reaches CI\$20,000 (approx. US\$24,000).

For a breach prescribed as serious, the fine is a single fine not exceeding: (a) CI\$50,000 (approx. US\$61,000) for an individual; or (b) \$100,000 (approx. US\$122,000) for a body corporate. For a breach prescribed as very serious, the fine is a single fine not exceeding: (a) CI\$100,000 (approx. US\$122,000) for an individual; or (b) CI\$1,000,000 (approx. US\$1,220,000) for a body corporate.

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.

Fines may be imposed even if the relevant breach is not a criminal offence. If a breach is also an offence, the imposition by CIMA of a fine will not preclude separate prosecution for that offence (or be limited by the penalty stipulated for that offence). Equally, any prosecution will not preclude the imposition of administrative fines or penalties.

The Monetary Authority (Administrative Fines) Regulations 2017, which also came into force on 15th December 2017 sets out, among other things, rules and guidance regarding the amount of fines, different categories of breaches, the criteria for exercising fine discretions, including procedures of imposing fines, appeals, payment and enforcement.

For specific advice on the imposition of administrative fines by the Cayman Islands Monetary Authority, please contact any of:

E: gary.smith@loebsmith.com

E: ramona.tudorancea@loebsmith.com

E: yun.sheng@loebsmith.com