

UPDATE

The Cayman Islands, the EU AML list and the FATF grey list

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The Cayman Islands will shortly be added to the EU's list of 'high risk third countries'.
What does this mean in practice?

Background

The Cayman Islands will be included on the EU's list of 'high risk third countries' (the **EU AML List**) on 13 March 2022. This inclusion is a technicality which stems from the addition of the Cayman Islands to the Financial Action Task Force's (**FATF**) list of jurisdictions under increased monitoring in the area of AML/CFT/CPF (the **FATF Monitoring List**), commonly referred to as the FATF 'grey' list, on 25 February 2021.

Practical consequences of the EU listing

There are few practical consequences arising from inclusion on the EU AML List although clients should be aware of the following.

AML

EU financial institutions will be required to conduct enhanced due diligence on business relationships and transactions involving non-EU listed jurisdictions, including the Cayman Islands, to the extent this is not already done in practice. This may include:

- obtaining additional information on customers, beneficial owners, and the source of funds and wealth; and
- enhancing internal controls to select patterns of transactions that need further examination.

Securitisations (including CLOs)

In accordance with the EU Securitisation Regulation¹ enacted in 2021, EU financial institutions will be prohibited from using Cayman Islands entities for securitisations. The Securitisation Regulation does not impact existing Cayman securitisation vehicles and nor does it impose restrictions on investors.

Investment funds

Inclusion on the EU AML List does not impact Cayman private equity or hedge fund structures (or their investors), which, where applicable, can continue to market into the EU under the AIFMD's² national private placement regime.

¹ Regulation (EU) 2017/2402.

² Directive (EU) 2011/61.

FATF listing – Cayman's progress to delisting

Jurisdictions on the FATF Monitoring List are required to swiftly resolve the AML deficiencies identified by the FATF. When the Cayman Islands was placed on the 'grey list' in February 2021, the FATF acknowledged that the jurisdiction had met 60 out of 63 its recommendations, including all technical aspects of its most recent inspection. It was also noted that the Caribbean Financial Action Task Force (**CFTAF**) had rated the Cayman Islands as compliant or largely compliant with 39 out of 40 technical compliance points. An action plan for the Cayman Islands, consisting of the following three action points, was stipulated at that time:

- Applying effective, proportionate and dissuasive sanctions, including the imposition of administrative fines and taking of enforcement action, in relation to AML breaches.
- Imposing adequate and effective sanctions in relation to the provision of inaccurate, inadequate or outdated beneficial ownership information.
- Demonstrating the prosecution of money laundering cases, with such prosecutions resulting in the application of dissuasive, effective and proportionate sanctions.

At its October 2021 plenary meeting, the FATF positively recognised Cayman's progress in completing the plan. It is industry understanding that the Cayman Islands has satisfied the required action points in large part, with the assessment of compliance, including the criterion regarding the demonstration of prosecution of money laundering cases for which the compliance deadline is May 2022, falling to be considered at the FATF plenary meeting scheduled for October 2022.

In addition, since its listing in February 2021, the Cayman Islands was re-rated by the FATF in October 2021 and is now either 'compliant' or 'largely compliant' for technical compliance with all 40 FATF Recommendations. Therefore, it is anticipated that the Cayman Islands will be removed from the FATF Monitoring List later this year.

Any questions?

Please get in touch with your usual Mourant contact if you have any questions. If you would like to know more about recent regulatory changes in the Cayman Islands, please see our [Cayman Regulatory Update](#).

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