



2018 Cayman Client Memo

Insights

May 8, 2018

As you may be aware, certain changes in Cayman Islands law relating to Anti-Money Laundering and Know Your Customer (AML / KYC) requirements go into effect in the near future. We are writing to our venture capital and private equity fund clients to remind you of such changes as well as regarding FATCA / CRS registration and reporting obligations for 2018.

If you manage Cayman Islands venture capital or private equity funds or other Cayman Islands entities, we encourage you to consult with your Cayman counsel regarding actions that you need to take to ensure compliance with these regulations and obligations.

AML / KYC

Effective as of **May 31, 2018**, closed-end funds (i.e., typical venture capital and private equity funds) will be subject to the heightened AML / KYC standards that historically have applied only to open-ended funds. These heightened standards will impose the following requirements:

(1) Review “know your customer” documentation for all investors in the fund and collect supplemental information where required. While the Cayman Islands Monetary Authority (“CIMA”) has provided significant guidance regarding the information that will be required for each type of investor (e.g., individuals versus well-known institutions), due to the complexity of this guidance and the time-consuming nature of the required analysis and data gathering, in most cases you will want to outsource this process to Cayman counsel or other Cayman service providers who are offering these AML/KYC services. We would be happy to provide you with a list of available

service providers and coordinate introductions.

(2) Develop and maintain systems, policies and procedures to combat money laundering and the financing of terrorism (“AML / CFT Systems”). Cayman counsel have standard policies that can easily be tailored to, and then adopted by, your organization. Your firm will need to adopt a manual that documents your role in combating and countering money laundering and the financing of terrorism, and explicitly describes your procedures for record-keeping, the identities of your appointed officers, procedures for internal and external reporting of suspicious activity, and auditing the firm’s AML / CFT Systems. These policies will require that you appoint a Money Laundering Reporting Officer (“MLRO”), Deputy Money Laundering Reporting Officer (“DMLRO”) and Compliance Officer (“CO”). Delegation and appointment of these officers to a third-party service provider is explicitly permitted in some cases, so this is an option that should be discussed with Cayman counsel.

(3) Conduct training and awareness regarding AML for all employees and ensure that all staff are appropriately experienced and trained for the position. This can be as simple as arranging periodic calls between Cayman counsel and appropriate personnel of your organization, during which Cayman counsel can provide training, answer questions and update you as to recent developments.

Note that for the first time the new AML / KYC regulations provide the regulators with the ability to impose penalties for non-compliance, including administrative or discretionary fines, although we have been advised that the authorities are unlikely to impose such fines on organizations that are undertaking appropriate efforts to comply. Accordingly, the above requirements should be considered without delay.

FATCA / CRS Registration and Reporting

2018 represents the second year of reporting by relevant entities with the Tax Information Authority (“TIA”) under both the FATCA and CRS regimes. For 2018, UK FATCA effectively has been replaced by CRS, and the list of CRS Reportable Jurisdictions has expanded significantly from 45 jurisdictions to approximately 90. In addition, for CRS the definition of “Controlling Person” that must be reported to the TIA has been expanded to include 10% or greater owners (compared to 25% under the prior definition). Cayman Islands closed-end funds that were formed prior to April 30, 2018 should already be registered with the TIA, and presumably the service providers who handled those filings will be aware of the new requirements. Managers of newer Cayman Islands funds should arrange with their accountants or

Cayman service providers to undertake the appropriate FATCA/CRS reporting.

Please contact the Gunderson Dettmer attorney with whom you regularly work on fund governance matters if you have any questions.

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