



**Ministry of Financial
Services & Commerce**
Cayman Islands Government

Consultation Cover Note

**Amendment of the Monetary Authority Act (2020 Revision) and
specific regulatory laws**

July 2022



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1 About this Consultation

The Ministry of Financial Services and Commerce (“**the Ministry**”) proposes to amend the Monetary Authority Act (2020 Revision) (**the “MAA”**) for three distinct purposes and therefore this consultation is divided into three sections.

Amendments are also proposed to several of the regulatory laws which are consistent with the amendments discussed in Section One.

This consultation seeks comments on the draft versions of the Bills and Regulations mentioned in Sections One, Two and Three.

This consultation is overseen by the Ministry on behalf of the Cayman Islands Government.

2. Section One

The Ministry proposes to amend the following Acts and Regulations:

- Monetary Authority Act (2020 Revision);
- Monetary Authority (Administrative Fines) Regulations (2022 Revision).
- Companies Management Act (2021 Revision);
- Directors Registration and Licensing Act, 2014;
- Insurance Act, 2010;
- Money Services Act (2020 Revision);
- Securities Investment Business Act (2020 Revision); and
- Virtual Asset (Service Providers) Act, (2022 Revision) (together hereinafter referred to as the “**specific regulatory laws**”).

to extend the provisions relating to liability for offences and the issuance of administrative fines to –

- partnerships, exempted limited partnerships (“ELPs”) and limited liability partnerships (“LLPs”) and partners of such partnerships, ELPs and LLPs; and
- unincorporated associations other than partnerships and all other relevant legal persons and individuals associated with these legal persons.



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2.1 Policy Intent and Considerations

The Ministry had previously amended the MAA and the Monetary Authority (Administrative Fines) Regulations (2019 Revision) (the “**Regulations**”) to address the concerns, recommendations and issues raised by the Caribbean Financial Action Task Force assessors in the Cayman Islands 4th Round Mutual Evaluation Report¹. Specifically, the MAA was amended to give CIMA the power to fine licensees and registrants for breaches of the regulatory laws while the amendment to the Regulations implemented the extension of the administrative fines regime. Both actions ensured compliance with FATF Recommendation 35, which requires countries to have a range of proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with the AML/CFT requirements.

However, at present, while bodies corporate and their officers are subject to the administrative fines regime, there are no provisions in the MAA which give CIMA the power to apply administrative fines to partnerships, exempted limited partnerships, limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations. This, effectively, lessens the range of persons against whom administrative fines can be administered in the event of a breach. The proposed amendments will harmonise the provisions of the MAA with the Proceeds of Crime Act (2020 Revision) (“**POCA**”) in relation to the application of administrative fines.

Additionally, the MAA and some regulatory laws only provide for bodies corporate, their officers and individuals acting on behalf of the body corporate to be subject to a criminal penalty where an offence is committed. Similar to the above, these additional persons are not subject to the criminal sanctions where a similar offence is committed. In order to remedy the aforementioned and, harmonise the provisions of the MAA with the POCA, the proposal is to amend the regulatory laws, listed in Section One (above) and discussed in Paragraph 2.2 (below), to extend criminal liability to partnerships, exempted limited partnerships or limited liability partnerships, partners; unincorporated associations and persons concerned in the management or control of unincorporated associations.

2.2 The Draft Amendment Bills and Amendment Regulations

The following is an overview of the proposed amendment Bills and amendment Regulations:

2.2.1 Monetary Authority (Amendment) Bill, 2022

It is proposed that the MAA be amended to expand the power of CIMA to impose administrative fines on partnerships, exempted limited partnerships or limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations where there is a breach of the MAA, regulatory law or the Anti – Money Laundering Regulations (2020 Revision).



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It is further proposed to amend the MAA to provide for the criminal liability of partnerships, exempted limited partnerships, limited liability partnerships, partners, unincorporated associations and persons involved in the management or control of unincorporated associations where an offence is committed

Two consequential amendments are proposed which provide for the fines applicable to persons listed above and repeal and replace Section 42H of the Act.

2.2.2 Monetary Authority (Administrative Fines) (Amendment) Regulations, 2022

The amendment to the Regulations seeks to provide that a notice under the Regulations can be given to an exempted limited partnership, a limited liability partnership and an unincorporated association. Notice can currently be given to partnerships.

2.2.3 Companies Management (Amendment) Bill, 2022

The amendment to the Companies Management Act (2021 Revision) seeks to provide for the liability of partnerships, exempted limited partnerships, limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations for offences.

2.2.4 Directors Registration and Licensing (Amendment) Bill, 2022

The amendment to the Directors Registration and Licensing Act, 2014 seeks to provide for the criminal liability of partnerships, exempted limited partnerships, limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations for offences.

2.2.5 Insurance (Amendment) (No.2) Bill, 2022

The amendment to the Insurance Act, 2010 seeks to provide for the criminal liability of partnerships, exempted limited partnerships, limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations for offences.

2.2.6 Money Services (Amendment) Bill, 2022

The amendment to the Money Services Act (2020 Revision) seeks to provide for the criminal liability of partnerships, exempted limited partnerships, limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations for offences.



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2.2.7 Securities Investment Business (Amendment) Bill, 2022

The amendment to the Securities Investment Business Act (2020 Revision) (“**SIBA**”) seeks to provide for the criminal liability of partnerships, exempted limited partnerships, limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations for offences.

2.2.8 Virtual Assets (Service Providers) (Amendment) Bill, 2022

The amendment to the Virtual Assets (Service Providers) Act 2020 seeks to provide for the criminal liability of partnerships, exempted limited partnerships, limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations for offences.

3. Section Two

The Ministry proposes to amend the MAA to enhance international cooperation with overseas regulatory authorities (“**ORAs**”) and local cooperation with the beneficial ownership (“**BO**”) competent authority.

3.1 Policy Intent and Considerations

There is currently no express provision in the MAA to allow CIMA the ability to proactively and voluntarily disclose information that is uncovered during its supervisory or other activities, including enforcement actions and onsite inspections, with ORAs. Therefore, expressly permitting CIMA to share non-public information of criminal conduct uncovered during the carrying on of its duties with an ORA would evidence and embody a high-level commitment to international cooperation.

Furthermore, while the changes made to the Companies Act (2021 Revision) through the Companies (Amendment) (No.3) Act, 2020 permit CIMA to disclose any information relating to a company or a subsidiary of a company regulated by CIMA, to the BO competent authority, a similar provision is not currently included in the MAA. For the avoidance of doubt, this provision has been mirrored in the MAA to make it clear that CIMA is legally permitted to share information regarding licensees and registrants with the BO competent authority.



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3.2 The Draft Amendments

3.2.1 Amendment of section 2 - definitions

This is a historical error that is being rectified in this Bill. The term “Definitions” is generally used as a section heading within secondary legislation, while the term “Interpretation” is reserved for use in Acts.

3.2.2 Amendment to section 50 - confidentiality

The insertion of provision (7A) under section 50 of the MAA seeks to explicitly permit CIMA to assist ORAs, by proactively and voluntarily making disclosures of criminal conduct uncovered during CIMA’s supervisory or other activities, including enforcement actions and onsite inspections.

The amendment made to section 50(8)(c) seeks to clarify that the assistance requested by, or the sharing of information with, an ORA should be to enable or assist an ORA to exercise its functions.

3.2.3 Insertion of section 50A – disclosure to the competent authority

The insertion of section 50A into the MAA seeks to expressly permit CIMA to share information regarding any regulated entity (licensed or registered) with the BO competent authority.

4. Section Three

The Ministry proposes to amend the MAA in order to ensure that the *disgorgement principle* is applicable to all persons regulated under the regulatory laws.

4.1 Policy Intent and Considerations

It was identified that the *disgorgement principle*, as defined in section 42F(5) of the MAA applies only to licensees. It ensures that licensees do not gain from breaching prescribed provisions.

4.2 The Draft Amendments

4.2.1 Amendment to section 42(F)

The amendment of the definition of the *disgorgement principle* seeks to ensure that the *disgorgement principle* is applicable to all persons regulated under the regulatory laws.



5. Responding to the Consultation

This document provides an outline and background on the draft Bills and Regulations. In this consultation, we seek feedback and encourage constructive responses from all parties.

Responses should be sent to DFSLegislation@gov.ky, using the response template provided, with the message title: “*Consultation – Amendment of the Monetary Authority Act (2020 Revision) and specific regulatory laws*”.

The information you provide in response, including personal information, may be disclosed in accordance with the Data Protection Act (2021 Revision) and the Freedom of Information Act (2021 Revision). Please note that any responses received may be made public, albeit on an anonymous basis where possible. Responses may also be shared with other public bodies to assist the Ministry with developing relevant policies.

Thank you in advance for your participation in this process.

6. Appendices: List of Included Legislation

The following draft legislation has been included for review:

Appendix 1: Monetary Authority (Amendment) Bill, 2022;

Appendix 2: Monetary Authority (Administrative Fines) (Amendment) Regulations, 2022;

Appendix 3: Companies Management (Amendment) Bill, 2022;

Appendix 4: Directors Registration and Licensing (Amendment) Bill, 2022;

Appendix 5: Insurance (Amendment) (No. 2) Bill, 2022;

Appendix 6: Money Services (Amendment) Bill, 2022; and

Appendix 7: Securities Investment Business (Amendment) Bill, 2022;

Appendix 8: Virtual Asset (Service Providers) (Amendment) Bill, 2022.