



THE ANCHOR



Cayman's Progress: FATF Grey List

At its June 2023 plenary, the Financial Action Task Force ("FATF") made the initial determination that the Cayman Islands has substantially completed its action plan and warrants an on-site assessment to verify that the implementation of the anti-money laundering and countering the financing of terrorism ("AML/CFT") reforms has begun and is being sustained, and that the necessary political commitment remains in place to sustain implementation in the future.

The Cayman Islands has made key reforms, including:

1. Applied sanctions that are effective, proportionate and dissuasive, and taking administrative penalties and enforcement actions against obliged entities to ensure that breaches are remediated effectively and in a timely manner;
2. Imposed adequate and effective sanctions in cases where relevant parties (including legal persons) do not file accurate, adequate and up to date beneficial ownership information; and
3. Demonstrated prosecution of all types of money laundering in line with the jurisdiction's risk profile and that such prosecutions are resulting in the application of dissuasive, effective, and proportionate sanctions.

During the onsite assessment, the FATF will visit the Cayman Islands to assess the operation of its action plan in practice and its sustainability. Following this, an onsite visit report will be presented at the next FATF plenary in October 2023, and the Cayman Islands will receive confirmation as to whether it will be removed from the 'grey list'.

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Money Laundering Risk in Art and Antiquities Market

In February 2023, the FATF published a report on [Money Laundering and Terrorist Financing in the Art and Antiquities Market](#). This included red flag indicators to help financial service providers (“FSPs”) identify suspicious activity.

Art and antiquities is a billion-dollar industry. Privacy and discretion is common, with buyers and sellers often seeking to remain anonymous to avoid being targets of crime, and from high net-worth individuals being charged higher prices. However, this also creates vulnerabilities in countering illicit activities. Intermediaries, Legal Persons or Arrangements (including trusts), can be used to hide the identity of buyers / sellers, to obscure the transfer of high-value art or the source of funds.

FSPs facilitating transactions in the art and antiquities market should understand who their customers are (including the ultimate sellers and purchasers), the potential for complicit professionals in the chain, and how to recognise suspicious activity.

FSPs should note the report’s non-exhaustive list of risk indicators. These may be used by those responsible for areas including compliance, transaction monitoring, investigative analysis, and client onboarding and relationship management.



Red flag indicators:

- Use of shell companies, trusts, or 3rd party intermediaries, including art dealers, brokers, advisers, or interior designers, to purchase, hold, or sell cultural objects
- Cash transactions (particularly large bulks)
- Use of large-denomination banknotes
- Unusually high profit margins on sales
- Sales or purchases of items involving sellers not concerned with recouping their initial investments
- Sales or purchases of art vastly / routinely exceeding expected sales
- Sales or purchases involving purchasers unconcerned with paying a substantially higher price than the notional value of the work
- Sales or purchases where a client is not familiar / interested in, the provenance, history, style, genre, or artist of an object
- Unwillingness of a customer to provide ID
- Undeclared imported / exported items
- Purchase or termination of insurance policies to protect market value or provide cash payments for the loss, theft, or destruction of privately held or donated high-value art in circumstances where other information has suggested the art has a low value
- Presence of natural or legal persons known to be involved in / suspected of trafficking in cultural objects
- Use of social media or financial intermediaries to advertise cultural objects that have been looted
- Unique archaeological pieces allegedly related to existing collections but previously unstudied
- Newly ‘discovered’ art attributed to a prominent artist
- Purchases of items by 3rd party intermediaries on behalf of an ultimate seller or purchaser
- Market participants without expertise in high-value transactions
- Transactions involving PEPs

Sanctions and Trust Services Providers

Trust Services Providers ("TSPs") are key gatekeepers in the fight against illicit finance. They must be vigilant to ensure that bad actors do not seek to misuse them, including for the purpose of evading sanctions.

Last year, CIMA conducted a [thematic review](#) of compliance by Trust and Corporate Services Providers ("TCSPs") with sanctions policies and procedures. Although 63% had adequate policies and procedures in place to address sanctions compliance, only 26% of the TCSPs inspected were effectively implementing their targeted financial sanctions ("TFS") screening policies and procedures across all the client files reviewed. CIMA recently published an [updated review](#) based on 2022 data, which shows encouraging improvement in systems and controls within TCSPs to identify, report and manage sanctions risk. Of the TCSPs inspected, 78% now have adequate TFS policies and procedures at the time of onboarding, and 91% for ongoing monitoring, compared with 63% and 89% in 2021. The effective implementation of these policies also improved from 2021 to 2022.

This is commendable progress, but TSPs in Cayman must continue to be aware of new sanctions orders and designated persons, particularly in relation to trustee services. On 16 December 2022, the Office of Financial Sanctions Implementation ("OFSI") announced amendments to the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#).

Regulation 18C (trust services) prohibits any person from providing trust services to, or for the benefit of, a person connected with Russia ("PCWR") (unless those trust services were being provided pursuant to an ongoing arrangement immediately prior to that regulation coming into force).

On 21 March 2023, the 1730 persons who were designated under Regulation 11 (asset freeze) were also designated under Regulation 18C (trust services). Trust services may not be provided to or for the benefit of these persons, unless permitted by a general or specific licence or there is an applicable exception. The Foreign, Commonwealth & Development Office [UK Sanctions List](#) and [OFSI's Consolidated List](#) were updated to reflect this.

TSPs in the Cayman Islands may have practical considerations when complying with these new sanctions orders and on 30 May 2023, OFSI published a [blog](#) to provide clarity on themes arising from questions OFSI has received.

When do Trust Services sanctions apply?

Persons Connected with Russia

Since 16 December 2022, it has been prohibited to provide new trust services to, or for the benefit of, a PCWR.

Designated Persons

Trust services must not be provided to, or for the benefit of, designated persons in accordance with these sanctions. According to OFSI, this means trust services (not the trust itself) must be wound down, unless a relevant exception applies, or a specific licence is obtained.

Where do Trust Services sanctions apply?

These prohibitions target the provision of trust services to, or for the benefit of, PCWR and designated persons. The prohibitions apply no matter the location of the trust or similar arrangement.

Permitted activity

On 21 March 2023, the Governor of the Cayman Islands issued General Licence GL/2023/0001. This permitted any activity (subject to the conditions in Paragraph 6) that may have been undertaken by a person necessary to terminate an arrangement between them and a designated person for that person to provide Trust Services. This General Licence expired 90 days after its issued date.

An application for a specific licence can be made to the Governor of the Cayman Islands by completing an Asset freeze and Trust Services Prohibition License application form found [here](#).

Key exceptions

Exceptions include: acts done for the purposes of complying with the prohibitions and obligations of an asset freeze; and Trust services provided in respect of registered pension schemes, where these services are not provided primarily to, or for the benefit of, a PCWR or designated person. Clarifications on exceptions for trust services were provided in [The Russia \(Sanctions\) \(Overseas Territories\) \(Amendment\) Order 2023](#).

Breaches of financial sanctions are considered to be a serious criminal offence. A person who provides trust services to a designated person or PCWR is liable to a fine, imprisonment, or both.

Useful Links

- See [The Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 17\) Regulations 2022](#)
- See [The Russia \(Sanctions\) \(Overseas Territories\) Order 2020](#)
- NECC's Red Alert on [Financial Sanctions Evasion Typologies: Russian Elites and Enablers](#)
- OFSI's [guidance updates](#) on trust services sanctions
- HM Government guidance on [trade sanctions, arms embargoes and other trade restrictions](#)
- OFSI's [General Licence](#) and [blog](#) on wind down of trust services
- See [Cayman Islands Financial Reporting Authority](#)