

## Cabinet News and Views

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### EU AML List Will Add The Cayman Islands



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On February 21, 2022, Commission Delegated Regulation<sup>[1]</sup> was published in the Official Journal of the European Union which will add the Cayman Islands to the list of countries that have been identified by the European Commission as having strategic anti-money laundering (“AML”) and counter-terrorist financing (“CTF”) deficiencies (the “EU AML/CTF List”). This new law, and the changes to the EU AML/CTF List, will take effect on March 13, 2022. This listing is linked to the Cayman Islands having been added to the Financial Action Task Force (“FATF”) “greylist” of jurisdictions under increased monitoring in June 2021, prompting the European Commission to assess whether the Cayman Islands should be added to the EU AML/CTF List.

From March 13, 2022, EU AML laws will require financial services businesses in the EU to apply enhanced due diligence measures when entering into business relationships with Cayman established entities. Given the long lead time since the FATF announcement, most institutions have already put in place systems and controls to ensure that such enhanced due diligence is carried out.

Furthermore, the EU Securitization Regulation prohibits the establishment of a “securitisation special purpose entity” (“SSPE”) in any country that appears on the EU AML/CTF List. Accordingly, EU investors will be prohibited from investing in securitization instruments issued by SSPEs established in the Cayman Islands, and could potentially face penalties from EU national regulators if they do so.

We note that there is a divergence between the EU and UK securitization regimes, as the UK Securitization Regulation does not contain a post-Brexit amendment referencing the EU AML/CFT List for the prohibition. Instead, the UK law refers only to a prohibition of the establishment of SSPEs established in FATF “blacklist” jurisdictions (currently North Korea and Iran).

There remains some uncertainty about the market effects of this development, particularly in relation to Cayman Islands-issued securitization instruments issued

prior to March 13, 2022. Nevertheless, it is clearly the case that where transactions are to be marketed to EU investors, an alternative offshore jurisdiction for the SSPE will need to be used.

[1] Delegated Regulation (EU) 2022/229, which amends Delegated Regulation (EU) 2016/1675 on the list of high-risk third countries with strategic anti-money laundering and counter-terrorist financing deficiencies under the Fourth Money Laundering Directive ((EU) 2015/849), available [here](#).

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