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Regulatory Update

Cayman Islands – Q1 2022

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Quick Fire Updates

1. Key filing dates - 2022

As we enter a new year, Mourant have prepared a useful [Reminder](#) regarding the key 2022 filing dates and requirements. Please contact us for guidance on any filing or compliance obligations.

2. 2022 CIMA deadlines – 15 January 2022

If you have a regulated entity in the Cayman Islands, the deadline for payment of the 2022 fees charged by the Cayman Islands Monetary Authority (CIMA) is **15 January 2022**. Failure to pay any annual fees by this deadline will result in late filing penalty fees being levied.

In addition, entities which are regulated as registered persons under the Securities Investment Business Act (2020 Revision) (as amended, [SIBA](#)), are required to file a completed Annual Declaration form with CIMA by **15 January** in each year. For more information, please see our [Update](#) here.

3. De-registration of private funds - update

On 1 December 2021, CIMA issued a [Notice](#) advising industry members that the cancellation/de-registration procedures for registered private funds are being revised following industry consultation.

Private funds seeking to de-register should, in the interim, refer to:

- CIMA's [Regulatory Procedure](#) relating to the cancellation of mutual fund registrations; and
- CIMA's [Regulatory Policy](#) on exemption from the audit requirement for a private fund.

4. AML/CFT updates from CIMA

In the December 2021 edition of [The Anchor](#), CIMA highlighted the following requirements for financial service providers (FSPs) (including regulated entities):

- FSPs must understand the risks involved in environmental crimes (ie, criminal offences harming the environment, including the illegal extraction of forestry and minerals), take note of the 'red flags' for potential illegal logging, mining and waste trafficking and consider how to incorporate these into their AML/CFT/CPF compliance framework.
- In addition to compliance with targeted financial sanctions on criminal operations undertaking ransomware attacks, FSPs should strengthen their detection and alert systems to prevent and detect against ransomware attacks. This includes:
 - reporting ransomware attacks immediately to law enforcement;
 - filing related suspicious activity reports;
 - conducting regular ransomware awareness training with staff; and
 - continually reviewing and updating new 'red flag' indicators of ransomware.

5. DITC Updates Bulletin

The Cayman Islands Department for International Tax Cooperation (DITC) released an [Updates Bulletin](#) on 19 October 2021. The Updates Bulletin included the following updates:

Compliance update

The DITC noted the following common themes illustrated by their analysis of the data submitted in respect of the 2020 CRS reporting year:

- A high number of financial institutions (FIs) failed to submit a 2020 CRS Filing Declaration or 2020 CRS Compliance Form by the applicable deadline. FIs with outstanding filings are advised to submit the same as a matter of urgency.
- A significant number of 2020 CRS Returns did not include certain required information (including a TIN or functional equivalent for individuals, controlling persons and entities and the date of birth for individuals and controlling persons). The DITC encourages FIs to submit a correction where possible and will be contacting FIs where this information was not provided in the CRS Return.

Comparison of AEOI and economic substance data

The DITC noted that it is matching CRS and FATCA notification data submitted against other data sources, such as economic substance notifications, CIMA licences/registrations, General Registry nature of business classifications and the IRS GIIN list. The DITC reminded FIs of the importance of correctly classifying under the CRS and FATCA regimes, noting that FIs may be liable to administrative fines or other sanctions for failure to comply with the applicable regulations.

Key changes to ESNs

The following changes have been made to the form of economic substance notification (ESN) to be submitted in respect of the 2021 ESN year and thereafter:

- Where the tax resident outside the Cayman Islands (TRO) exemption is claimed, the entity will be required to provide the date of its financial year end on the ESN.
- Where the entity is an 'investment fund' for the purposes of the Cayman economic substance regime, the following will apply:
 - The current question – 'Check this box if the CIMA, FI or GIIN numbers provided below relate to another investment fund that directly invests or operates through the entity' will change to the following mandatory question – 'The CIMA, FI and / or GIIN information provided below belongs to another investment fund that directly or indirectly invests or operates through the Entity'. The only responses available will be "Yes" or "No".
 - Where the answer is "Yes", the following new questions are asked:
 - specify name of investment fund; and

Quick Fire Updates

- specify jurisdiction of investment fund.

Economic substance reminders

The DITC highlighted the importance of each entity classifying itself correctly for the purposes of the economic substance regime, noting that an error should be corrected as soon as practicable in accordance with the DITC's [Practice Points document](#).

The DITC also recommends that, where the 'investment fund' exemption is claimed on an ESN, the entity/partnership should provide its CIMA, GIIN and/or FI number(s). If the entity/partnership does not itself have a CIMA, GIIN or FI number but another investment fund that directly or indirectly invests or operates through that entity/partnership does, the entity/partnership should check the relevant box on the ESN and input the CIMA, GIIN and/or FI number of that investment fund.

6. Companies Act amended

The Companies (Amendment) Act, 2021 was gazetted on 16 December 2021, though is not yet in force. This Amendment Act provides for the restructuring of a company under the supervision of a 'restructuring officer' and a stay of proceedings where a company is restructuring, where a provisional liquidator is appointed or where a winding up order is made.

For more information, see our [Update](#) on the introduction of a dedicated restructuring officer and our [Update](#) on the abolition of the 'headcount test' for schemes of arrangement.

7. Beneficial Ownership Enforcement Manual updated

The General Registry, as competent authority for the Cayman Islands' beneficial ownership regime, updated the Beneficial Ownership Enforcement Manual with effect from 26 November 2021.

The changes made to the [Revised Manual](#) include the following:

- *What are Administrative Fines?* - paragraph 1.6 outlines what is a single breach and that single breaches can occur multiple times, in the case where a corporate service provider fails to file information for multiple entities. Failure to file for each entity is a breach.
- *Section four - The Procedure for Imposing a Fine* provides clarity on the investigative process that will be taken prior to a fine being levied. The use of warning notices has been removed.

On 25 October 2021, the General Registry circulated a reminder to industry regarding the obligation to file adequate, accurate and up-to-date beneficial ownership information, and to file updated information when relevant changes have taken place. This notice also informed industry that over 300 administrative fines were imposed by the General Registry between October 2020 and September 2021 in relation to breaches of the beneficial ownership regime.

8. FATF upgrades Cayman's AML/CFT compliance

On 21 October 2021, the Cayman Islands Government issued a [Press Release](#) noting that the Cayman Islands' technical compliance with the 40 Recommendations of the Financial Action Task Force (FATF) was upgraded in February and October 2021. The FATF's October 2021 [Follow-up Report and Technical Compliance Re-Rating](#) concluded that the Cayman Islands is now rated Compliant or Largely Compliant in relation to all of the 40 Recommendations.

The Press Release also noted that the International Convention for the Suppression of the Financing of Terrorism was extended to the Cayman Islands in August 2021. This Convention requires signatories to criminalise the financing of terrorism, as well as to take measures to identify, detect and freeze assets related to terrorism, and to prosecute terrorism financing offences.

9. Mourant Guides and Updates

Mourant Ozannes has uploaded some new Updates and updated Guides to our website, as follows:

- [Cayman key filing dates - 2022](#)
- [Cayman Islands to introduce a dedicated 'restructuring officer'](#)
- [Cell companies/segregated portfolio companies - a comparison](#)
- [Top Takeaways: ACAMS 3rd Annual Caribbean Conference](#)
- ['Headcount test' to be abolished for members' schemes of arrangement](#)
- [Filing deadline for the 2022 annual declaration for registered persons](#)

Contacts



Catherine Pham
Partner, Cayman Islands
+1 345 814 9247
catherine.pham@mourant.com



Danielle Roman
Partner, Hong Kong
+852 3995 5705
danielle.roman@mourant.com



Hector Robinson QC
Partner, Cayman Islands
+1 345 814 9114
hector.robinson@mourant.com



Nicholas Fox
Partner, Cayman Islands
+1 345 814 9268
nicholas.fox@mourant.com



Sara Galletly
Partner, Cayman Islands
+1 345 814 9233
sara.galletly@mourant.com