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Regulatory Update

Cayman – Q3 2024

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Quick Fire Updates

1. CRS reporting reminders

The Department for International Tax Cooperation (DITC) issued an [Updates Bulletin](#) in June 2024 reminding Cayman Islands financial Institutions (FIs) of the following common reporting standard (CRS) annual reporting obligations:

CRS Filing Declaration – required by all FIs with a CRS reporting obligation (deadline 31 July 2024)

- FIs must make a CRS return to the DITC for each Reportable Account maintained during the reporting period.
- If the FI did not maintain any Reportable Account(s) in any Reportable Jurisdiction(s), a nil return should be made.
- The CRS Filing Declaration is required to be submitted annually via the DITC Portal by all FIs with reporting obligations.
- For FIs with no Reportable Accounts, the CRS Filing Declaration constitutes a nil Return indicating that the FI has not submitted any Account Reports for that Reporting Period.
- For FIs with Reportable Accounts, the CRS Filing Declaration summarises the number of accounts reported and should be submitted after the CRS XML Returns.

CRS XMLs – required by all FIs with CRS reportable accounts (deadline 31 July 2024)

- CRS Reportable Accounts must be reported to the correct jurisdiction of tax residence, being the jurisdiction of tax residence listed on the self-certification. This is not to be confused with the jurisdiction of nationality/place of birth, which may be different.
- The following information for each account holder (individual and controlling person) must be included in the XML:
 - full legal name
 - full residence address
 - TIN
 - date of birth
 - valid account number (NANUM should only be used in exceptional circumstances)
 - closed accounts (account closures must be reported).

CRS Compliance Form – required by all FIs with a CRS reporting obligation (deadline 16 September 2024)

- The total value of accounts should be the total value of reportable (under CRS) and non-reportable financial accounts.
- Before selecting “No” to the non-reportable accounts question, FIs should check that this has been correctly answered, for example:
 - any US account holders have been included (including FATCA reportable accounts)

- any CRS non-reportable controlling persons for a trust have been included e.g. a Trustee and a settlor in a non-reportable jurisdiction.

The principal point of contact must check that their reporting is free from errors before a submission is made.

2. Reportable and participating jurisdictions for CRS

The [CRS Participating Jurisdictions and CRS Reportable Jurisdictions lists](#) were gazetted in the Cayman Islands on 12 April 2024.

The following countries have been removed as participating jurisdictions for CRS: Georgia, Gibraltar, Kazakhstan, Liberia, Moldova, Montenegro, Morocco, Qatar, Uganda and Ukraine

The list of reportable jurisdictions for CRS is amended to include:

- Georgia, Kenya, Moldova and Ukraine for reports due in 2024 onwards; and
- Armenia, Morocco, Rwanda, Senegal, Tunisia and Uganda for reports due in 2025 onwards.

In the context of the updates to the list of reportable jurisdictions, the DITC issued a related new version of its [Updates Bulletin](#) in April 2024 and reminded reporting financial institutions that they are required to make a reasonable effort to obtain the TIN(s) and date of birth information for accounts by the end of the second calendar year following the year in which the accounts were identified as Reportable Accounts.

3. AML Regulations amended

The [Anti-Money Laundering \(Amendment\) Regulations 2024](#) came into force on 19 April 2024 to amend the Anti-Money Laundering Regulations (2023 Revision) as follows:

- references to proliferation financing (in addition to money laundering and terrorist financing) were added throughout;
- the minimum one-off transaction value was reduced from CI\$15,000 to CI\$10,000 (to align more closely with the USD/EUR15,000 threshold required by the FATF);
- the provisions relating to batch transfers of virtual assets were clarified;
- the provisions for designated non-financial business and professions (DNFBPs) were amended to:
 - empower the Supervisory Authority of a DNFBP to request (by notice in writing) documents, statements or any other information as it may reasonably require to determine if the DNFBP is carrying out relevant financial business;
 - require the DNFBP register to include the name and date of appointment of the AML officers;
 - require a DNFBP intending to carry on business in the Cayman Islands to submit information identifying its ownership and control structure (including beneficial ownership information);

Quick Fire Updates

- o require DNFBPs conducting relevant financial business to notify the Supervisory Authority within 30 days of any change to the above information or the assessment of risk of a person (under regulation 8); and
- o empower the Supervisory Authority of a DNFBP to impose administrative fines on a director, manager, secretary, partner or other similar officer for a contravention of the regulations where it was committed with their consent or connivance or attributable to any neglect on their part;
- regulation 8 (*Assessment of risk*) was amended to require a person carrying out relevant financial business to:
 - o keep risk assessments up to date;
 - o implement policies, controls and procedures that are consistent with national requirements and guidance from competent authorities and self-regulatory bodies, and monitor their implementation;
 - o where higher proliferation financing risks are identified, take measures to mitigate the identified risks, including applying enhanced due diligence measures aimed at detecting possible breaches, the non-implementation, or evasion of targeted financial sanctions; and
 - o where lower proliferation financing risks are identified, ensure that measures to manage the risks are commensurate with the level of risks and that the person complies with the targeted financial sanctions applicable in the Cayman Islands.
- administrative fine amounts were inserted for partnerships and other unincorporated associations (CI\$100,000 for a serious breach and CI\$250,00 for a very serious breach).

4. Proceeds of Crime Act amendments delayed

Pursuant to the [Proceeds of Crime \(Amendment\) Act, 2023 \(Commencement\) \(Amendment\) Order, 2024](#) gazetted on 1 May 2024, the remaining provisions of the [Proceeds of Crime \(Amendment\) Act 2023](#) will come into force on **2 January 2025** (rather than 30 April 2024).

The provisions not yet in force relate to sections 133 (*Concealing*), 134 (*Arrangements*) and 135 (*Acquisition, use and possession*) of the Proceeds of Crime Act (2020 Revision) which create various money laundering offences (including concealing, arranging and possession of criminal property). Once in force, the wording in these provisions will be clarified to provide that a person does not commit an offence where they make a disclosure to the Financial Reporting Authority (**FRA**) and have the consent of the FRA to commit the act. However, this does not apply to the person who committed or was a party to the act from which the property derives.

Sections 133 and 135 will also be amended to remove references to the defence of intending to make a disclosure to a nominated officer.

5. Regulatory Policy for VASPs

The Cayman Islands Monetary Authority (**CIMA**) [Regulatory Policy - Registration or Licensing of Virtual Asset Service Providers](#) came into effect on 15 May 2024, with the exception of the licensing component which will come into effect upon commencement of the licensing regime for virtual asset trading platform operators and virtual asset custodians pursuant to the Virtual Assets Service Providers Act (as amended, the **VASP Act**).

The Regulatory Policy applies to:

- persons seeking to register under the VASP Act to carry on virtual asset service in or from within the Cayman Islands; and
- persons seeking a virtual asset service licence under the VASP Act to provide virtual asset custody service or wanting to operate a virtual asset trading platform,

but excludes persons seeking a sandbox licence under Part 3 of the VASP Act.

The Regulatory Policy covers:

- the general considerations before applying for registration or licensing;
- the procedure for registration and licensing of VASPs;
- the assessment criteria for registering and licensing VASPs, including:
 - o fit and proper criteria;
 - o ownership and control;
 - o corporate governance;
 - o business plan; and
- risk management, internal operational systems and controls.

6. CIMA Rule and Statement of Guidance – Market Conduct for TCSPs and Company Managers

The [CIMA Rule and Statement of Guidance – Market Conduct for Trust and Corporate Services Providers and Company Managers \(Rule and SoG\)](#) was gazetted on 22 May 2024 and will come into effect 6 months from gazettal (ie, **22 November 2024**).

This Rule and SoG establishes minimum requirements and guidance for trust and corporate service providers (**TCSPs**) and company managers to ensure fair treatment of clients and general protection of clients' assets and monies in relation to the business of company management and trust business.

The Rule and SoG covers:

- Integrity;
- conflicts of interest;
- advice and use of discretion;
- client money and assets;
- resources;
- advertising and communication;
- terms of business;
- directorship services; and
- complaints handling.

Quick Fire Updates

7. CIMA Regulatory Update

On 31 March 2024, CIMA published its [Regulatory Update: June 2023 to December 2023](#). The update covers legislative changes, regulatory updates, external assessments and consumer and industry outreach for the period.

8. Fees increased for local companies

The [Local Companies \(Control\) \(Amendment\) Act, 2024](#) and the [Local Companies \(Control\) \(Fees\) Regulations, 2024](#) were gazetted on 1 May 2024 and came immediately into force, amending the fees for local companies as follows:

Description	New fee
Processing fee for an application for a licence pursuant to section 10(2) of the Act for all categories of applicants	CI\$500 (US\$610)
Licence fee pursuant to section 10(2) of the Act for all categories of applicants with the exception of accountants and bulk fuel installation businesses	CI\$12,500 (US\$15,244)
Licence fee pursuant to section 10(2) of the Act for accountants	CI\$5,000 (US\$18,293)
Licence fee pursuant to section 10(2) of the Act for bulk fuel installation businesses	CI\$25,000 (US\$30,488)
Annual licence fee pursuant to section 13(1) of the Act for all categories of applicants with the exception of accountants and bulk fuel installation businesses	CI\$12,500 (US\$15,244)
Annual licence fee pursuant to section 13(1) of the Act for accountants	CI\$5,000 (US\$18,293)
Annual licence fee pursuant to section 13(1) of the Act for bulk fuel installation businesses	CI\$25,000 (US\$30,488)

9. CIMA AML/CFT Newsletter

CIMA has published a new edition of its [AML/CFT Newsletter - The Anchor](#) dated May 2024. The edition covers:

- removal from the FATF and EU 'Grey Lists';
- Targeted Financial Sanctions Updates (including [Guidance](#) published by the UK Government and a [Red Alert](#) on exporting high risk goods);
- New 'Travel Rule' Guidance for VASPs (as set out in Part IX of the updated AML Guidance Notes dated February 2024); and
- ML/TF Risks Posed by Informal Funds Transfer Networks (such as Hawala, Hundi, Fei ch'ien, and Chitti).

10. Industry Notice – Audit Waivers for regulated funds

On 2 May 2024, CIMA issued an [Industry Update](#) advising of enhancements to the process for submitting audit waiver applications for regulated funds through the REEFS portal. The changes will enable audit waiver applications to be fully completed within REEFS.

From 27 May 2024, all new audit waiver applications are to be filed via the REEFS portal using the form FWV-161-22. The relevant application fee may be paid by local cheque or escrow payment.

A [Completion Guide](#) to the Audit Waiver application process is available on CIMA's website.

11. Official Liquidators fees increased

The [Insolvency Practitioners \(Amendment\) Regulations 2024](#) were gazetted on 3 June 2024 and came into force retrospectively on 1 June 2024. The Regulations increase the minimum and maximum hourly rates for Official Liquidators as set out below, and will apply to every proceeding which is pending or commenced on or after 1 June 2024.

Grade of staff	Min	Max
Official Liquidator and any Partner	US\$630	US\$1180
Consultant	US\$360	US\$1180
Director or Principal	US\$560	US\$900
Senior Manager	US\$460	US\$750
Manager or Assistant Manager	US\$360	US\$630
Senior or Senior Accountant	US\$265	US\$455
Administrator	US\$65	US\$265

12. General licence – Legal services

On 24 May 2024, The Governor of the Cayman Islands issued [General Licence GU2024/0001](#) (the [General Licence 2024](#)) to permit an Attorney or Law Firm (as defined in the General Licence 2024) who has provided legal advice to a person designated under either the Russia or Belarus sanctions regime to receive payment from that designated person without a specific licence issued by The Governor, provided that the terms of the General Licence 2024 are met.

The provisions of the General Licence 2024 do not mirror those of the previous General Licence GU2023/0003 for legal services. The main changes are:

- the Attorney's fees and expenses caps have been reset. to US\$600,000 and 10% of the legal fees up to US\$60,000 respectively;
- the Attorney's fees and expenses caps now apply to each Law Firm instructed by the Designated Person to cover all matters on which that law firm is instructed by that Designated Person; and
- brief fees and refresher fees are permitted to be paid to an Attorney in the event these are fixed fees and not subject to hourly rates. Such fees may be included in the overall fee cap of US\$600,000.

Quick Fire Updates

13. Update to economic substance notifications and returns

The DITC has made amendments to the economic substance notification (**ESN**) and economic substance return (**ESR**). The main amendments are as follows:

- the ESN now requires the input of the start date and end date of the relevant financial year - previously only disclosure of the ESN year was required;
- if the relevant activity as filed in the ESN does not match the relevant activity as filed in the ESR, the ESR now requires (1) a full explanation of the facts and circumstances of the change in the relevant activity and (2) the upload of any supporting documents that substantiate the explanation. Previously no explanation was required; and
- the completion of the 'directed and managed' section of the ESR is now required for all returns. Previously this was only required when the entity had relevant income above \$0 (i.e. the directed and managed questions did not apply to entities filing a nil ESR).

These amendments apply to all ESNs and ESRs filed from the day the updates in the DITC's system were made, including applying to ESNs or ESRs covering historic periods.

14. CIMA Climate Survey Circular

On 3 June 2024, CIMA published an [Industry Notice](#) reissuing its Climate Change and Environmental-Related Risks Survey to facilitate broader participation and a higher response rate. All regulated entities that did not complete the initial survey were encouraged to participate in the survey by the closing deadline of 12 July 2024.

The objective behind the survey was to gather insight into the strategies, practices and challenges associated with climate change and environmental risk and their management by the financial services industry.

15. CIMA REEFS user experience survey

On 7 June 2024, CIMA published an [Industry Notice](#) announcing the launch of the [2024 REEFS User Experience Survey](#), with a submission deadline of 21 June 2024. The survey aims to gather valuable insights from all entities utilising the REEFS portal to help identify key areas for improvement.

16. Perpetuities (Amendment) Bill

The [Perpetuities \(Amendment\) Bill, 2024](#) was gazetted on 24 May 2024 and aims to increase the Cayman Islands' competitiveness in the trusts and estate planning sector by removing the mandatory perpetuity period of 150 years for many existing and future trusts. These amendments would be in line with several other relevant financial services centres that have removed the perpetuities provision in their respective legislation.

17. Mourant Guides and Updates

Mourant has uploaded the following Cayman Updates and Guides to our website over the last quarter:

- [What a creditor needs to know about liquidating an insolvent Cayman company](#)
- [The pick and choose jurisdiction? Restructuring Officers vs Provisional Liquidators](#)
- [Shareholders' agreements for BVI and Cayman Islands companies – Key issues you should consider](#)
- [Economic substance in the Cayman Islands](#)
- [The Cayman Islands - advantages as an offshore jurisdiction](#)
- [Carrying on business in the Cayman Islands](#)
- [Limited Partnerships: Cayman Court confirms jurisdiction to appoint an alternative voluntary liquidator](#)

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