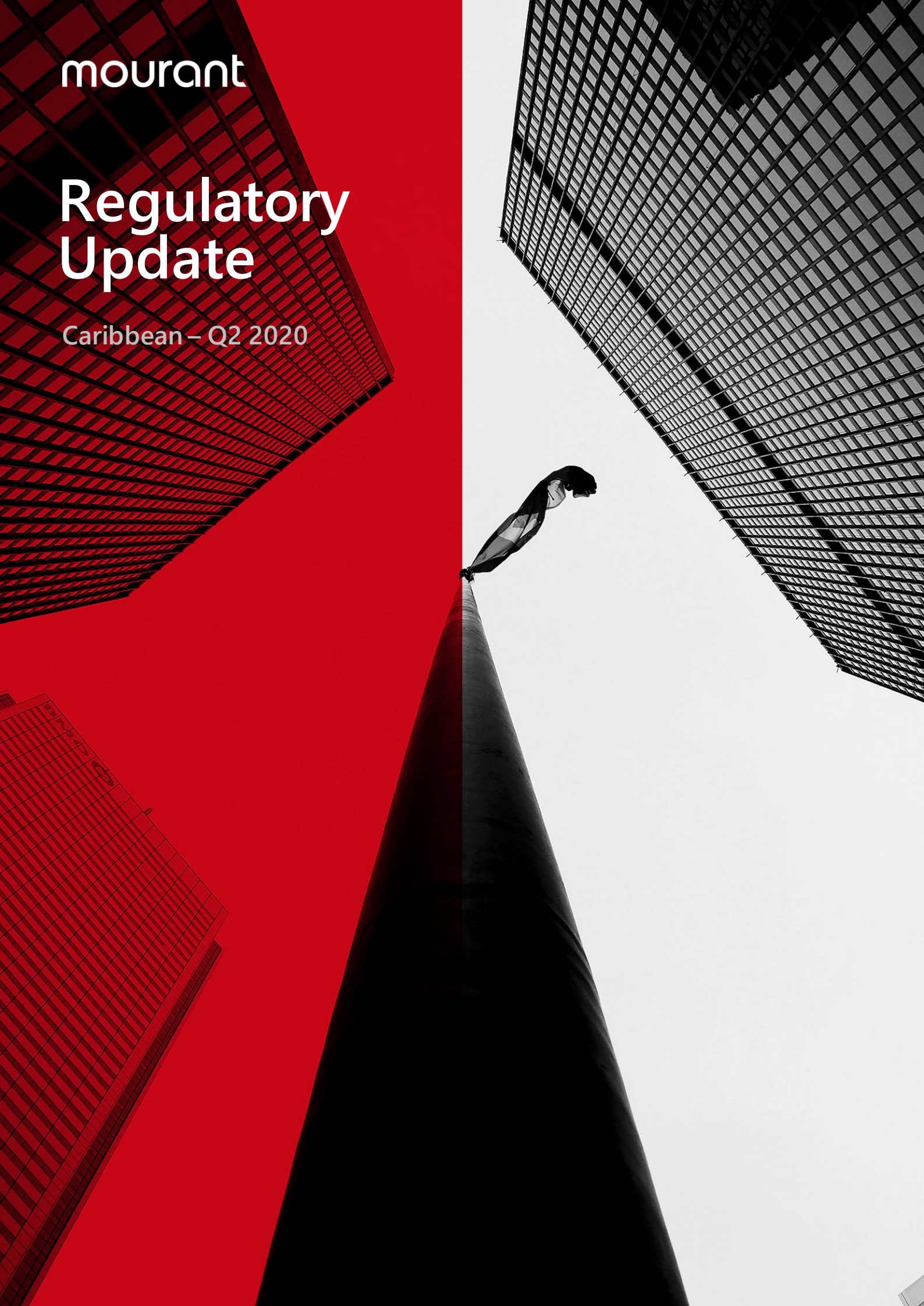


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Regulatory Update

Caribbean – Q2 2020



Quick Fire Update

1. BVI 'whitelisted' in February 2020

The BVI was removed from the EU Council's 'grey list' (Annex II to the list of non-cooperative jurisdictions for tax purposes) on 18 February 2020, confirming that the EU considers the BVI to be a fully compliant jurisdiction for tax purposes.

View our Update [here](#) for more information.

2. BVI – ITA updates Rules on Economic Substance

On 10 February 2020, the BVI International Tax Authority (the **ITA**) published version 2 of the **BVI Economic Substance Rules** (the **Rules**) to clarify any ambiguities in the previous version. The Rules state that the maximum timescale for an entity to come into full compliance would not typically extend beyond two financial periods. They also provide further clarification and practical examples for the relevant activities of intellectual property (**IP**) business and distribution and service centre business.

The Rules also confirm that:

- strategic decisions for the relevant activity (not the legal entity) are required to be taken in the BVI in order to meet the direction and management component of the economic substance test;
- it is not necessary for a legal entity to perform all of the core income generating activities (**CIGA**) listed in the legislation for a particular sector, but it must perform the CIGA which generates its income and CIGA must be conducted in the BVI
- monitoring of outsourcing must be undertaken in the BVI; and
- an entity licensed by the BVI Financial Services Commission in respect of a regulated activity must comply with any relevant restrictions on outsourcing imposed by that licence or by the relevant financial services law, in addition to the economic substance requirements.

3. Update on BVI economic substance reporting under BOSS

The Beneficial Ownership Search Secure System (Time Limit for Prescribed Information) Regulations, 2020, which came into force retrospectively on 1 October 2019, clarify that a corporate and legal entity (**CLE**) shall notify its BVI registered agent of the requisite substance-related information within a period of 6 months following the end of the relevant financial period.

Those CLEs which became subject to the Beneficial Ownership Search Secure System Act, 2017 as a result of the wider definition of "corporate and legal entity" introduced pursuant to the Economic Substance (Companies and Limited Partnerships) Act, 2018 (as amended, the **ES Act**), are under a duty to ascertain information on beneficial owners and registrable legal entities with effect from **1 October 2019**.

4. BVI economic substance for IP business update

The Economic Substance (Companies and Limited Partnerships) (Intellectual Property Business Requirements) Regulations, 2020 were enacted in March 2020, with retrospective effect from 1 October, 2019.

Those regulations provide that the requirement to rebut the presumption under section 9(2) of the ES Act, that a high risk IP legal entity does not conduct CIGA (and has not, therefore, satisfied the economic substance test), must be satisfied not only at the point in time at which the legal entity seeks to rebut the presumption but also during any historic periods when the legal entity was carrying on the IP business in question.

5. Deadlines and economic substance during COVID-19 (BVI)

The ITA issued a press release on 19 March 2020 which, amongst other things, stated that no changes to the CRS, FATCA, CbCR and economic substance reporting deadlines were proposed, but noting that further information would be forthcoming in relation to temporary economic substance arrangements. A copy of the 19 March press release can be found [here](#).

A subsequent press release issued on 27 March 2020 provided the following guidance in relation to economic substance:

- where possible, recourse should be had to the appointment of alternate directors in the BVI in order to meet substance requirements;
- all directors do not have to attend board meetings in the BVI - only as many as required to make the meeting quorate (given social distancing protocols, virtual meetings may be preferred)
- not all board meetings need to be held in the BVI - only those related to CIGA;
- where it is still not possible to have a board meeting in the BVI or to meet some other substance requirement due to restrictions (whether in the BVI or otherwise) due to the COVID-19 outbreak, then entities are urged to retain documentation to be able to support such claims for the applicable periods of time affected; and
- individual requests should be made to the ITA for any extension of time within which to comply with any notices, along with any supporting evidence.

It should be noted that these measures are only temporary and the ITA urges relevant entities to make every effort to otherwise comply with the full substance requirements, as the reasonable and practical approach (above) taken by the ITA only applies where entities need to make adjustments to their usual operating practices as a result of COVID-19 measures.

The 27 March 2020 press release can be found [here](#).

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6. BVI – CRS lists of participating and reportable jurisdictions updated

The BVI issued updated lists of participating and reportable jurisdictions for CRS on 19 March 2020.

The list of participating jurisdictions now includes Albania, Ecuador, Kazakhstan, the Maldives, Oman and Peru.

The list of reportable jurisdictions has been updated to include the Cook Islands, Cyprus, St. Lucia and Turkey for exchanges in 2020.

7. BVI – Country by Country Reporting (CbCR)

The ITA announced in February 2020 that it will be ready to receive CbCR via the electronic portal, BVI Financial Account Reporting System (BVIFARS), from March 2020.

See the press release [here](#) for more information.

8. Closed-ended Cayman funds now regulated

The Private Funds Law, 2020 (PFL) came into force in the Cayman Islands on 7 February 2020, introducing a regulatory regime for closed-ended funds in the Cayman Islands for the first time.

The PFL requires closed-ended Cayman fund vehicles to apply for registration with the Cayman Islands Monetary Authority (CIMA) within 21 days of accepting capital commitments from investors. Such fund vehicles must be registered prior to accepting capital contributions from investors for the purposes of investments.

In addition, the transition period allows until **7 August 2020** to register a private fund that is in scope.

Please see our Guide on [Private Equity Funds in the Cayman Islands](#) for more information.

The Monetary Authority Law (2020 Revision) was amended on 7 February 2020 so that, amongst other things, the PFL was included within the definition of "regulatory laws" under that Law.

9. Changes to regulation of Cayman mutual funds

The Mutual Funds (Amendment) Law, 2020 came into force in the Cayman Islands on 7 February 2020, introducing new regulation for a category of previously unregulated mutual funds known as **limited investor funds**.

A limited investor fund (which was previously exempted from regulation under s.4(4) of the Mutual Funds Law (2020 Revision)) is where the equity interests in the fund are held by 15 or fewer investors and a majority of those investors have the power to appoint or remove the fund's operator (ie, the directors, general partner or trustee, as applicable). The exemption from regulation for limited investor funds has now been removed and such funds will be required to register with CIMA and will be subject to regulation under the Mutual Funds Law. In particular, it should be noted that directors of regulated mutual funds in the Cayman Islands are required to be registered or licensed under the Director Registration and Licensing Law, 2014.

During the transition period which ends on **7 August 2020**, all new and existing limited investor funds are not required to pay the annual registration fee at the time of registration. Thereafter the annual registration fee will be US\$4,268.

See our Guide on [Mutual Funds in the Cayman Islands](#) for more information.

10. Changes to Cayman Fund Annual Return (FAR) form

Regulations were Gazetted in mid-March 2020 effecting some changes to the FAR form required to be filed by open-ended fund vehicles regulated under the Mutual Funds Law (2020 Revision).

CIMA has not issued any press release in relation to the new FAR form, which now requires additional information including in relation to:

- the independence and regulation of the investment manager, NAV calculation agent and registrar and transfer agent;
- the jurisdiction(s) of the investors; and
- the total number of side letters entered into with investors.

Please contact us for additional information.

11. Cayman economic substance update

The Cayman Islands economic substance legislation was amended in early February 2020 by the International Tax Co-operation (Economic Substance) (Amendment) Law, 2020.

The key changes introduced by this amendment Law are as follows:

- All Cayman Islands companies, LLCs and LLPs must now file an annual economic substance notification, even where they do not fall within scope of the economic substance regime. This notification must be filed as a prerequisite to filing the entity's annual return, late filing of which leads to late filing penalties being charged and, in due course, being struck from the relevant register. The initial deadline for filing of the notification and 2020 annual return was 31 March 2020 but this has been extended in light of the COVID-19 pandemic to 30 June 2020.
- The Tax Information Authority (TIA) has the power to impose a fine where an in-scope relevant entity fails to prepare and submit its annual report within the specified time. The penalty is CI\$5,000 with an additional penalty of CI\$500 for each day the breach continues.
- Where an entity claims tax residence outside of the Cayman Islands, information must be provided to the TIA on the relevant entity's immediate parent, ultimate parent and ultimate beneficial owner. The TIA is then required to exchange that information with the relevant competent authorities.

12. Amendment of Cayman AML Regulations

The Anti-Money Laundering Regulations (2020 Revision) (the **AML Regulations**) were amended on 5 February 2020 by the Anti-

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Money Laundering (Amendment) Regulations, 2020. Those amendment Regulations made numerous changes to the AML Regulations, with the key change being a change in approach in relation to risk assessment. From 5 August 2020, a new Regulation 8A will require persons assessing risk in relation to countries or geographic areas to take account of certain "credible sources" related to money laundering, terrorist financing, proliferation financing, corruption and any other criminal activity.

Thereafter, a country or geographic area is not to be designated as low risk where any of a list of factors are present, including (a) where sanctions have been issued by the United Kingdom or the United Nations; or (b) where the country or geographic area has been identified by credible sources as:

- not having effective systems to counter money laundering, terrorist financing and proliferation financing;
- having significant levels of corruption, terrorism and money laundering; and
- an area to which counter-measures or enhanced due diligence should be applied.

The "credible sources" include evaluations and reports published by the Financial Action Task Force, the International Monetary Fund, the World Bank, the OECD and the United Nations.

From 5 August 2020, this assessment must also be conducted in relation to situations where reliance is currently placed on the list of jurisdictions with equivalent AML legislation published by the Anti-Money Laundering Steering Group; including in relation to "acceptable applicants" in low-risk situations and electronic payments received from overseas regulated banks.

Additional amendments made to the AML Regulations include the insertion of additional references relating to anti-proliferation financing measures, including a definition of "proliferation".

13. Amendments to Cayman beneficial ownership regime

The Cayman Islands beneficial ownership reporting regime under Pat XVIIIA of the Companies Law (2020 Revision) and Part 12 of the Limited Liability Companies Law (2020 Revision) was amended in February 2020.

The key changes to this regime are described below, and will come into force on 15 May 2020:

- The amendment to the definition of "beneficial owner" to include persons who hold, directly or indirectly, 25% or more of the shares or voting rights in a company. The current definition of beneficial owner is limited to persons who hold more than 25% of the shares or voting rights in a company.
- To clarify that a company is a "subsidiary" of an entity or entities if such entity/ies, separately or collectively, hold 75% or more of the shares or voting rights in the underlying company. The current position require that the entity/ies hold *in excess of 75%* of the shares or voting rights in the underlying company for that company to be regarded as subsidiary.

In addition, the February 2020 amendments (which came into force on 19 February 2020):

- make it easier for the Minister for Financial Services to search beneficial ownership registers by removing the previous requirement that such searches require the prior approval of a designated senior official;
- allow the competent authority to make a request for further information from either a company or its corporate services provider, and impose penalties for non-compliance with such a request; and
- clarify the role of corporate service providers in maintaining beneficial ownership registers.

Amendments that are largely equivalent to those summarised above have been made to the Limited Liability Partnership Law, 2017, but they have not yet come into force.

14. Cayman CRS and FATCA update

The Cayman Department for International Tax Cooperation (DITC) issued an industry advisory in early March highlighting a number of amendments to the Cayman Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) regimes, as follows:

- The annual reporting deadline for both FATCA and CRS reporting for Cayman financial institutions has been changed from 31 May to 31 July annually.
- However, the deadline for 2019 reporting has been extended to 18 September 2020.
- A legal person, as well as an individual, can act as a Principal Point of Contact (PPOC) together with a second legal person or individual (Authorising Person) who has authority to provide notice of changes in respect of the PPOC.

In addition, PPOCs and Authorising Persons are now required to be appointed for the FATCA as well as the CRS regime in Cayman.

The DITC has issued FAQs on the new DITC Portal, confirming that the portal will allow for bulk reporting, bulk user changes and a more streamlined process, as well as economic substance reporting from August 2020 and CbCR later in the year. Updated FATCA and CRS Guidance Notes and a DITC Portal User Guide will be available in due course.

Further information regarding the above can be found [here](#).

A revised [List of CRS Reportable Jurisdictions](#) was published on 25 February 2020 to include Albania, Ecuador, Kazakhstan, Maldives, Nigeria, Oman, and Peru as Reportable Jurisdictions for reports due in 2020 onwards.

15. Extensions to filing deadlines during COVID-19 (Cayman)

CIMA has extended the deadlines for various regulatory filings as set out in this [notice](#). These include one-month extensions for the filing of various returns which would otherwise have been due on or before 30 June 2020, and also for 30-day extensions to be granted on a case-by-case basis, including for regulated funds

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and mutual fund administrators to file their audited financial statements/FAR. The full list of extensions is set out [here](#).

In addition, CIMA will accept affidavits and other documents that have been notarised/certified using the DocuSign process or utilising audio-video technology during this time.

Further guidance was provided by CIMA on 30 March 2020, including confirmation that no fees will be charged in relation to the extensions for filing of regulatory returns. This notice can be found [here](#).

The Registrar of Companies (ROC) and the DITC have extended the deadline for the submission of annual returns and economic substance notifications to 30 June 2020 (from 31 March 2020).

In addition, the ROC will accept affidavits or other documents that have been notarised or certified online or utilising audio-video technology during this time. Further detail is set out in the Government's [notice](#).

16. SIBL licensees – annual client report requirement

The Securities Investment Business (Conduct of business) (Amendment) Regulations, 2020 were Gazetted on 7 February 2020 and impose a new reporting requirement with respect to licensees under the Securities Investment Business Law (2020 Revision) (as amended, SIBL).

SIBL licensees who:

- (a) carry on a regulated activity under SIBL for a foreign fund (where "foreign fund" means a non-Cayman entity which is carrying on business from the Cayman Islands pursuant to section 4(4)(b) of the Mutual Funds Law or section 5(3) of the PFL); or
- (b) manage securities belonging to a foreign fund (where "foreign fund" means a non-Cayman entity which is not carrying on business in the Cayman Islands but is being managed by a SIBL licensee that manages securities under paragraph 3 of Schedule 2 to SIBL),

must submit an annual client reporting statement to CIMA in the required form.

The report requires information in relation to each fund, including name, jurisdiction of registration/incorporation, name of any stock exchange on which the fund is listed and the name of any overseas regulatory authority which regulates that fund.

17. Cayman's response to the EU

The Cayman Islands was included on Annex I to the EU Council's list of non-co-operative jurisdictions for tax purposes (commonly referred to as the 'blacklist') following a decision made on 18 February 2020. The Cayman Islands Government has expressed its disappointment at the inclusion of the Cayman Islands on the EU's list of non-cooperative jurisdictions for tax purposes, and has begun the process to request removal from the list.

View our Update [here](#) for more information.