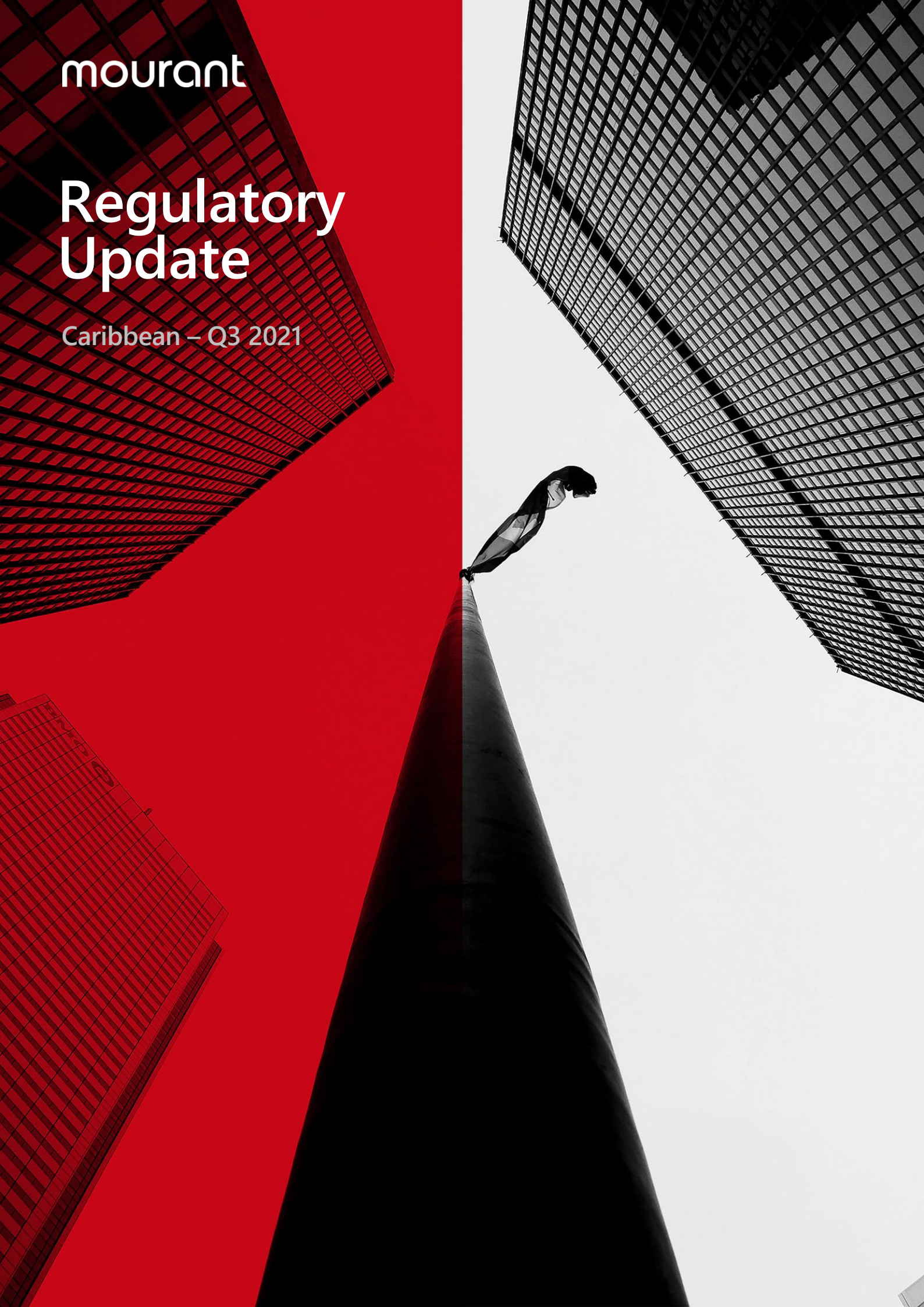


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Regulatory Update

Caribbean – Q3 2021



BVI UPDATES

1. Changes to BVI economic substance regime

Extension of regime to limited partnerships without legal personality

The BVI economic substance regime was extended on **30 June 2021** by expanding the definition of **legal entity** under the Economic Substance (Companies and Limited Partnerships) Act, 2018 (the **Substance Act**) to include limited partnerships without legal personality. Previously, the regime only applied to limited partnerships with legal personality.

Any newly in-scope limited partnerships carrying on a relevant activity will be required to satisfy the applicable economic substance test under the Substance Act from:

- for limited partnerships formed after 1 July 2021, the date on which the relevant entity commences the relevant activity; or
- for existing for limited partnerships, **1 January 2022**.

Introduction of 'investment fund' definition

The amendments made to the Substance Act with effect from 30 June 2021 revised the definition of 'relevant activities' under section 6 of the Substance Act to exclude 'investment fund business'. A new definition of **investment fund business**, meaning the business of operating an investment fund, has also been inserted.

Investment fund, means an entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments and includes any entity through which an investment fund directly or indirectly invests or operates (but not an entity that is itself the ultimate investment held), but does not include certain regulated entities.

For more detail, see our Update [here](#).

2. Amendments to the BVI beneficial ownership legislation

The Beneficial Ownership Secure Search System Act, 2017 (the **BOSS Act**) was amended on **16 July 2021** to reflect the above changes to the economic substance regime. Accordingly, the exclusion for partnerships without legal personality was removed from the definition of **corporate and legal entity**.

Various other changes were made to clarify provisions within the BOSS Act, including an obligation for corporate and legal entities to provide the registered agent (**RA**) with the economic substance information required to be maintained on the RA database.

¹ Section 59(2) of the Regulatory Code, 2009 (as amended) had previously stated that a licensee's financial statements were required to be prepared in accordance with IFRS, UK GAAP, US GAAP or Canadian GAAP.

Definitions were also added for **immediate parent** (which could include a partnership) and **ultimate parent**, to further clarify obligations under the BOSS Act.

For further details, see our Guide to the BVI beneficial ownership legislation [here](#).

3. Incoming changes to the BVI's AML regime

The BVI have introduced a new package of legislation to provide a robust framework for anti-money laundering (**AML**), combatting the financing of terrorism (**CFT**) and counter proliferation financing (**CPF**).

The first phase of legislation, which came into force on **9 July 2021**, includes the following:

- Criminal Code (Amendment) Act, 2021
- Customs Management and Duties (Amendment) Act, 2021
- Drug Trafficking Offences (Amendment) Act, 2021
- Proceeds of Criminal Conduct (Amendment) Act, 2021
- Proliferation Financing (Prohibition) Act, 2021

It is then anticipated that the following second phase of legislation will be passed later this year:

- Counter-Terrorism Act, 2021
- Criminal Justice (International Cooperation) (Amendment) Act, 2021
- Financial Investigation Agency (Amendment) Act, 2021

For more information, see our Update [here](#).

4. BVI FSC issues Regulatory (Amendment) Code, 2021 and Regulatory (Insurance Code of Conduct) Code, 2021

On 12 April, 2021, the BVI Financial Services Commission (**FSC**) announced the issuance of the Regulatory Amendment Code, 2021 (the **Amendment Code**) and the Regulatory (Insurance Code of Conduct) Code, 2021 (the **Insurance Conduct Code**), both of which came into force on 12 July 2021.

Amendment Code

The Amendment Code:

- imposes specific requirements on claims handling records which must be maintained by licensed insurers and insurance intermediaries; and
- clarifies¹ that a licensee's financial statements must be audited in accordance with:
 - US GAAP;
 - International Standards on Auditing (UK);
 - International Standards on Auditing;
 - Hong Kong Standards on Auditing
 - Canadian Auditing Standards; or
 - other recognised international auditing standards as are approved by the FSC.

Quick Fire Updates

Insurance Conduct Code

The Insurance Conduct Code introduces a framework to govern the market conduct of domestic insurers, insurance intermediaries and loss adjusters, including General Conduct Principles and specific rules for each of those regulated businesses.

For more information and for access to the Amendment Code and the Insurance Conduct Code, see the FSC's Industry Circular [here](#).

5. BVI introduces data protection regime

The Data Protection Act (DPA) was gazetted on 13 April 2021 and came into force on **9 July 2021**. The DPA seeks to establish a legal framework to ensure the protection of personal data collected and processed by public and private bodies. For more detail, see our Update [here](#).

6. FSC Act amended

The Financial Services Commission (Amendment) Act, 2021 was gazetted on 13 May 2021 and came fully into force on **9 July 2021**. A summary of the amendments is provided below.

Duty to notify breach or offence

The amendments made to s.54A of the Financial Services Commission Act, 2021 (as amended, the **FSC Act**):

- extend the obligation on authorised and registered agents to notify the FSC of breaches or offences committed by a licensee to include any 'other person' for whom they act;
- permit the FSC to require fines imposed under s.54A to be paid immediately or in instalments;
- clarify that the obligations under both s.54A and s.54B of the FSC Act also apply to an authorised representative, insurance manager or any other person who acts in the capacity of an agent with respect to a licensee or other person under the FSC Act or any other financial services legislation.

Waiver of penalty

A new s.54B was inserted into the FSC Act with retrospective effect from **17 March 2017**², providing that:

- penalties imposed on a licensee or other person may (if certain stipulated conditions are met) be waived if a failure to file was due to the default of the authorised or registered agent or an act of God;
- an authorised or registered agent must notify a licensee or other person if it has failed to file a document or perform some other function on their behalf and provide the reason for the failure³;
- where the FSC decides that failure to file or perform an action is attributable wholly or partly to the default of the authorised or registered agent, the FSC may, without prejudice to any penalty available under s.54A:

- suspend the authorised or registered agent from taking on new business;
- direct the licensee or other person to change its authorised or registered agent; or
- direct the authorised or registered agent to make such changes as the FSC deems fit; or
- take such other action against the authorised or registered agent as the FSC deems fit; and
- where the FSC decides that failure to file or perform an action is attributable wholly or partly to the default of the licensee or other person, the FSC may:
 - require the licensee to pay either the full penalty or such portion of the penalty as the FSC considers fit; or
 - waive the imposition of any penalty if the FSC is satisfied that the circumstances justify a waiver.

7. Financial Services (Exemption) (Amendment) Regulations

The Financial Services (Exemptions) (Amendment) Regulations, 2021, which came into force on **9 July 2021**, amend the Schedule to the principal regulations in relation to the exemptions applicable to the Banks and Trust Companies Act, 1990. The changes amend certain paragraphs relating to private trust companies.

8. Amendment of trusts legislation

A suite of BVI trusts legislation was gazetted on 13 May 2021 and came fully into force on **9 July 2021**. The relevant legislation is as follows:

- Administration of Small Estates (Amendment) Act 2021
- Property (Miscellaneous Provisions) (Amendment) Act 2021
- Trustee (Amendment) Act 2021
- Virgin Islands Special Trusts (Amendment) Act 2021

A summary of the amendments is provided below.

Administration of Small Estates (Amendment) Act, 2021

This Amendment Act amends the Administration of Small Estates Act by:

- altering the definition of 'small estate' by increasing the value threshold from \$240.00 to \$25,000.00;
- increasing the fee to be paid in respect of a grant of letters of administration or of probate under the principal Act from \$1.20 to \$25; and
- altering the penalty for an offence under the principal Act from a fine not exceeding \$120.00 or imprisonment for a term not exceeding six months to a fine not exceeding \$5,000.00 or imprisonment for a term not exceeding 12 months.

² Whilst s.54B is deemed to have come into force on 17 March 2017, that section shall not, in relation to the filing of a document, apply to a licensee or other person who has already paid a penalty for failure to file a document within the prescribed period.

³ An authorised or registered agent who fails to comply commits an offence and is liable on summary conviction to a fine not exceeding \$10,000

Quick Fire Updates

Property (Miscellaneous Provisions) (Amendment) Act, 2021

This Amendment Act amends the Property (Miscellaneous Provisions) Act, 2003 including by inserting a new s.3A, which abolishes any rule of law or policy that a disposition in favour of an unborn illegitimate issue is void.

Trustee (Amendment) Act, 2021

This Amendment Act amends the Trustee Act by:

- providing for powers of the court to vary trusts;
- providing for power of the court to set aside the flawed exercise of fiduciary power;
- strengthening the firewall provisions;
- introducing extra reserved powers for settlors; and
- introducing new record keeping requirements for trustees (these amendments are deemed to have come into force on **30 March 2015**).

For more information, see our Update [here](#).

Virgin Islands Special Trusts (Amendment) Act 2021

This Amendment Act amends the Virgin Islands Special Trusts Act, 2003. The amendments are a consequence of the amendments to the Trustee Act on variations of trust (as briefly summarised above).

9. Introduction of electronic transactions legislation

The following e-commerce legislation was gazetted on 13 May 2021 and came fully into force on **9 July 2021**:

- Electronic Transactions Act, 2021
- Electronic Filing Act, 2021

Electronic Transactions Act, 2021

Amongst other things, this statute provides:

- for the legal recognition of electronic communications;
- that information or matters required by law to be given in writing may be provided in the form of an electronic communication;
- that information or matters required by law to be given in a prescribed form may be provided electronically;
- for the retention of documents, records or information in electronic form;
- for the use of electronic communications and records in court proceedings;
- for the formation and validity of electronic contracts; and
- for the use of electronic communications to meet signature requirements under law or contract.

Electronic Filing Act, 2021

This statute provides for:

- the use of electronic records and signatures by public authorities;
- the ability to make electronic filings with a public authority;
- the ability to make documents, records or information available for inspection in electronic record form; and
- recognition of electronically filed documents and records.

10. New fees for BVI business companies and limited partnerships

The BVI Business Companies (Amendment of Schedule 1) Order, 2021 and the Financial Services (Limited Partnership Fees) (Amendment) Regulations, 2021 came into force on **1 July 2021** and introduced certain new fees, as follows:

BVI business companies

Registration of a notice of registration as registered agent	\$100
Filing a notice of rescission of registered agent	\$75
For the initial registration by the Registrar of a copy of a \$75 register of directors	
Filing by a foreign company of notice of ceasing to carry on business in the BVI	\$100
Certified copy or certified extract of a certificate of incorporation, restoration, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing	\$75
Uncertified copy or uncertified extract of the above certificates	\$50
Duplicate certificate	\$50
Physical copy certificate of any nature where an electronic version of the certificate has been provided	\$50
Any other certified or uncertified document for which a fee is not specified	\$100
The registration of any document required or permitted to be registered, or the filing of any transaction required, under the BVI Business Companies Act, 2004, where a fee is not specified	\$100

Limited partnerships

Certified copy or certified extract of a certificate of registration, restoration, merger, consolidation, arrangement, continuation, discontinuance, deregistration, good standing, etc.	\$75
Uncertified copy or uncertified extract of the above certificates	\$50
Duplicate certificate	\$50
Physical copy certificate of any nature where an electronic version of the certificate has been provided	\$50
Any other certified or uncertified document for which a fee is not specified	\$100

FAQs

The FSC released some [FAQs](#) relating to the above legislation and fees on 30 June 2021.

Quick Fire Updates

11. BVI sanctions legislation

The Global Anti-Corruption Sanctions (Overseas Territories) Order, 2021, adopted by the UK Parliament, came into force on 26 April 2021. This piece of legislation extends (with modifications) the equivalent UK regime under the Global Anti-Corruption (Sanctions) Regulations, 2021 to all UK Overseas Territories, including the BVI.

The BVI sanctions legislation can be accessed via the FSC's website [here](#).

12. Updated CRS lists of participating jurisdictions and reportable jurisdictions

The International Tax Authority (ITA) issued an updated CRS List of Participating Jurisdictions on 18 March 2021, which included Liberia, Morocco and New Caledonia.

The ITA also issued an updated CRS List of Reportable Jurisdictions on 29 April 2021 to include Curacao, Costa Rica and Hong Kong (China) for exchanges in 2021.

13. BVI Terrorist Financing Risk Assessment 2020

The FSC's [June Newsletter](#) announced that the FSC has published the BVI's Terrorist Financing Risk Assessment 2020 (the **Assessment**), which looks at the terrorist financing (TF) threats facing the BVI and TF risks posed by financial institutions, designated non-financial businesses and professions and non-profit organisations.

A copy of the Assessment can be accessed via the Newsletter.

14. AML returns via VIRRGIN

The FSC has experienced technical difficulties in the launch of the VIRRGIN Returns platform. The FSC [requested](#) on 15 June 2021 that any persons experiencing difficulty in submitting AML returns via the VIRRGIN Returns platform complete the AML Returns spreadsheet on the FSC website and submit it via email to amlreturns@bvifsc.vg.

All prudential and AML/CFT returns were required to be filed by 15 May 2021 for the 2020 calendar year.

CAYMAN UPDATES

15. Investment fund trends webinar

On 5 July 2021, we hosted a webinar on Mondaq, a leading online knowledge resource, discussing what's trending in Cayman funds. You can watch it on-demand by clicking [here](#).

16. Extension of economic substance regime to include partnerships

The Cayman economic substance (ES) regime was extended on 30 June 2021 by expanding the definition of a **relevant entity** under the International Tax Co-operation (Economic Substance) Act (2021 Revision) to include:

- Cayman Islands partnerships, except where the partnership is a local partnership;
- Cayman Islands exempted limited partnerships (ELPs); and
- foreign limited partnerships registered in the Cayman Islands (**foreign LPs**).

Partnerships, ELPs and foreign LPs must satisfy the ES test in relation to a relevant activity from:

- for partnerships, ELPs and foreign LPs formed after 1 July 2021, the date it commences the relevant activity; or
- for partnerships, ELPs and foreign LPs in existence prior to 1 July 2021, **1 January 2022**.

All partnerships will be required to make an ES notification, including local partnerships and investment funds which are otherwise excluded.

For more detail, see our Update [here](#).

17. Updated economic substance guidance

The Cayman Islands Tax Information Authority (TIA) adopted updated [Economic Substance Guidance Notes](#) (version 3.1) on 30 June 2021.

The updated Guidance Notes contain a new Appendix reflecting the application of the Cayman ES regime to general partnerships, limited partnerships, ELPs and foreign LPs.

18. Economic substance practice points

The Cayman Islands Department for International Tax Cooperation (DITC) updated their [ESN practice points](#) on 3 June 2021. Amongst other things, the amended practice points confirm the following:

- An ES notification should be submitted by a terminating entity (for each outstanding ES notification year) via the Registrar's online system, CAP, before the entity is deactivated in CAP (ie, before applying for a strike off or deregistration or before being placed in liquidation).
- Where an entity which is pending strike off, deregistration or liquidation (or which has already been struck off, deregistered or liquidated), has outstanding ES notifications

but is unable to submit the same via CAP, details of the affected entity should be provided by email to the DITC, who will then provide instructions for any further requirements.

- Additional clarity is provided regarding the ES notification process and the amendment of an ES notification.

19. ES notifications - investment funds

Whilst 'investment funds' are not required to meet the ES test under the Cayman substance regime, they must submit an ES notification in each calendar year as a prerequisite to filing their annual return.

Where possible, the investment fund entity should provide its CIMA, FI or GIIN identifying number on the ES notification. If an entity does not have an identifying number as it is an entity through which an investment fund directly or indirectly invests or operates, it should provide the identifying number of the relevant investment fund.

The DITC is currently contacting Cayman registered office service providers regarding investment funds which have not submitted an identifying number in their ES notification(s).

20. DITC Updates Bulletin

The DITC posted an updated [Updates Bulletin](#) on 2 July 2021 which notes the following:

- The DITC portal is open for 2020 CRS and FATCA reporting.
- The applicable deadlines for CRS and FATCA reporting (see below).
- The obligation to file CRS compliance forms for all financial institutions with CRS reporting obligations, including trustee documented trusts.
- The ES notification submission window for a relevant entity's financial year commencing in 2021 is open. This is primarily to allow entities to submit ES notifications prior to a deregistration, strike off or dissolution (see the update regarding the ESN practice points above).

21. CRS compliance form – 2019 and 2020 deadline

At our recent Regulatory Seminar, the DITC reminded industry attendees that the 2019 CRS Compliance Form and the 2020 CRS Compliance Form are both due on or before **15 September 2021**. A bulk upload option of the form in CSV format is expected to be released soon.

The DITC would encourage early completion of the forms. FAQs to assist are available at <https://www.ditc.ky/crs/crs-faqs/>.

Failure to submit a CRS compliance form is an offence which could lead to liability for a fine.

Quick Fire Updates

22. AEOI reporting update

The remaining 2021 deadlines applicable to the Cayman automatic exchange of information regimes are set out below:

- 2019 & 2020 CRS and FATCA reporting – **31 July 2021**
- 2019 & 2020 CRS filing declaration – **31 July 2021**
- 2019 & 2020 CRS compliance form – **15 September 2021**

23. Private funds – FAR form and deadline

The Cayman Islands Monetary Authority (CIMA) issued a **Notice** on 1 July 2021, advising that the fund annual return (FAR) form for private funds will be available from 9 July 2021.

The deadline for filing audited financial statements and the FAR form is **30 September 2021**. See our **Update** for more information.

24. CIMA Notice – AML officers

CIMA issued a **Notice** on 7 June 2021 reminding all licensees and registrants⁴ of their obligation to ensure that their AML officers (the AML Compliance Officer, Money Laundering Reporting Officer and Deputy Money Laundering Reporting Officer) are aware of their respective duties and responsibilities under the Anti-Money Laundering Regulations (2020 Revision) (as amended, the **AMLRs**), and will act in accordance with them.

Amongst other points, the Notice provided a reminder that AML officers must be:

- fit and proper to conduct their role;
- suitably qualified and experienced;
- persons at management level who report directly to the board of directors or equivalent;
- natural persons;
- autonomous;
- able to have access to all relevant materials; and
- able to dedicate sufficient time for the efficient and effective discharge of their respective functions.

The Notice also reiterated that where the AML officer function is outsourced by a Cayman entity, the regulated entity retains ultimate responsibility for compliance with the AMLRs.

25. Change in effective date for Basel II public disclosures

CIMA issued a **Notice** on 28 May 2021 advising all banks incorporated in the Cayman Islands that the Rules and Guidance on Market Disclosure Requirements will be implemented in two phases, as follows:

- Phase 1 will take place over the period of 1 September 2021 to 31 August 2022. During this phase, banks will be expected to submit disclosure reports to CIMA.
- Phase 2 will commence on 1 September 2022. From this date, banks must publish the required disclosure reports on their websites (as stipulated in the Rules and Guidance).

⁴ This obligation extends to all persons conducting 'relevant financial business', as defined under the Proceeds of Crime Act (2020 Revision)

26. FATF greylist update

As reported in our **Q2 Regulatory Update**, the Cayman Islands were placed on the Financial Action Task Force's (FATF) 'grey list' of countries which are under increased monitoring in relation to their AML, CFT and CPF regimes.

As a result of being placed on the grey list:

- The Financial Crimes Enforcement Network (FinCEN) added the Cayman Islands to its **11 March 2021 Advisory**.
- HM Treasury revised its **Advisory Notice** on Money Laundering and Terrorist Financing controls in higher risk jurisdictions to include the Cayman Islands.
- Going forwards, it is likely that the Cayman Islands will be listed by the European Union (EU) as a 'high risk third country'⁵ for AML/CFT purposes (the EU AML blacklist) later in 2021.

It should be noted that:

- the FATF does not call for the application of enhanced due diligence measures to be applied to jurisdictions on the greylist but encourages its members and all jurisdictions to take the listing into account in their risk analysis; and
- the Cayman Islands is not on the FATF's list of 'high risk jurisdictions subject to a call for action', also known as the FATF blacklist.

Cayman has already made positive progress in this regard, with the FATF's **June Update** to the Jurisdictions under Increased Monitoring noting the following in relation to the Cayman Islands:

'Since February 2021, when the Cayman Islands made a high-level political commitment to work with the FATF and CFATF to strengthen the effectiveness of its AML/CFT regime, the Cayman Islands has taken steps towards improving its AML/CFT regime, including by applying sanctions that are effective, proportionate and dissuasive, and taking administrative penalties and enforcement actions against obliged entities to ensure that AML/CFT breaches are remediated.'

The Cayman Islands should continue to work on implementing its action plan to address its strategic deficiencies, including by:

- (1) *imposing adequate and effective sanctions in cases where relevant parties (including legal persons) do not file accurate, adequate and up-to-date beneficial ownership information in line with those requirements; and*
- (2) *demonstrating that they are prosecuting 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.'*

⁵ For more detail, see: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing/eu-policy-high-risk-third-countries_en.

Quick Fire Updates

27. Cayman sanctions legislation

The Global Anti-Corruption Sanctions (Overseas Territories) Order, 2021, adopted by the UK Parliament, came into force on 26 April 2021. This piece of legislation extends (with modifications) the equivalent UK regime under the Global Anti-Corruption (Sanctions) Regulations, 2021 to all UK Overseas Territories, including the Cayman Islands.

For more information, see the [Notice](#) issued by the Cayman Islands Financial Reporting Authority on 26 April 2021 with respect to the commencement of the Global Anti-Corruption Sanctions regime.

28. Onsite inspections – Top tips

Please see our [Update](#) for some tips on how best to prepare for a CIMA onsite inspection.