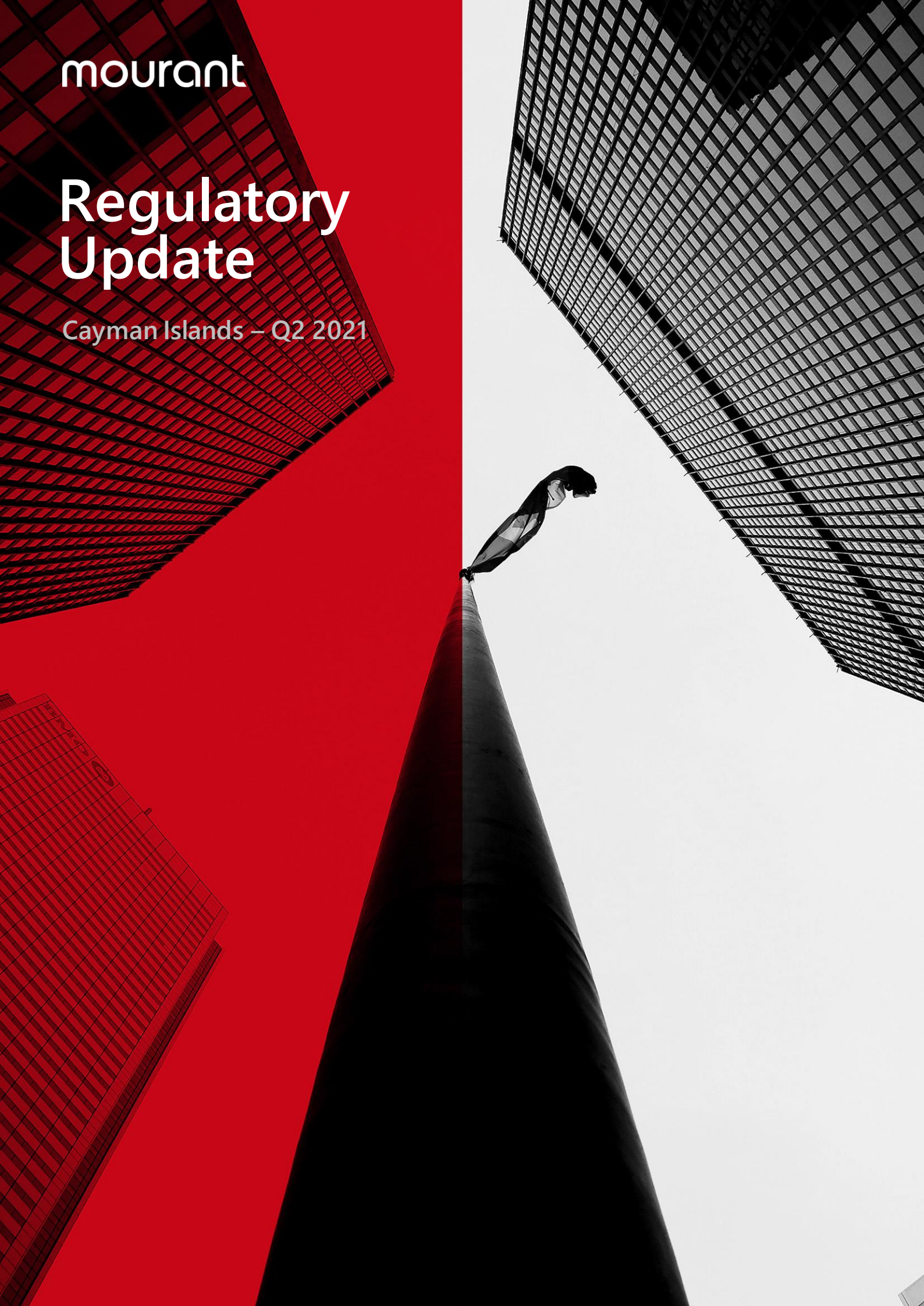


mourant

Regulatory Update

Cayman Islands – Q2 2021



Quick Fire Updates

1. Mourant Cayman Regulatory Seminar

On 26 February 2021, Mourant held its annual Regulatory Seminar at the Ritz Carlton, Grand Cayman. The seminar included a presentation from the Cayman Islands Monetary Authority (CIMA) and a fireside chat with the Department for International Tax Cooperation (DITC), followed by an AML/CFT training session for the directors amongst the attendees.

For our top 'take-aways' from the seminar, please click [here](#).

2. Economic substance deadlines

The remaining Cayman Islands economic substance (ES) deadline for first year reporting is **30 April 2021**. This applies for relevant entities reporting in relation to any relevant activity (other than IP business) carried on during a financial period ending between 31 December 2019 and 30 April 2020. For such entities reporting on a period ending on or after 1 May 2020, the deadline is 12 months after the period end date.

Please note the above deadlines do not apply to first year reporting for entities conducting high risk IP business or claiming to be tax resident overseas, which should have made their submissions by 28 February 2021 (for financial periods ending between 31 December 2019 and 29 February 2020). For such entities reporting on a financial period ending on or after 1 March 2020, the deadline is 12 months after the period end date.

ES returns are made via 'smart forms' on DITC's online portal. It is important to submit the returns before the deadline as the ES legislation imposes a late filing penalty of US\$6,098 and an additional penalty of US\$610 for each day during which the failure to file continues.

3. Economic substance practice points

The DITC updated their [ESN practice points](#) on 19 March 2021 to provide further guidance on completing the online smart forms on the DITC Portal. The newly added practice points confirm the following:

- Only individuals (not entities) can be assigned as secondary users on the DITC portal.
- Secondary users do not automatically lose their access rights to the entities they are assigned to upon a change of the responsible person. If a newly designated responsible person does not wish any previously assigned secondary user to continue to have access to any entity, then the responsible person must remove them.
- Functionality to allow Tax Resident outside the Cayman Islands (TRO) Forms to be submitted for successive reporting periods is in the process of being added to the DITC Portal. Currently, any attempt to submit a TRO Form for a successive reporting period will be rejected. The submission process will therefore be simplified for circumstances where no changes have taken place since the last reporting period.

4. 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/>.

5. Private funds –annual returns and regulations

The Private Funds (Annual Returns) Regulations, 2021 and Private Funds (Amendment) Regulations, 2021 came into force on 25 March 2021.

Annual returns

The Private Funds (Annual Returns) Regulations, 2021 confirm that a private fund must submit an annual return to CIMA in respect of each financial year (in the form set out in the Schedule to the Regulations) within six months after the end of the financial year to which it relates or within any extension of that period as CIMA may allow.

The annual return fee will be:

- CI\$300 (US\$366); and
- an additional CI\$150 (US\$183) for (1) each alternative investment vehicle (AIV), unless the AIV is itself registered as a private fund, and (2) each sub-fund,

in respect of which the private fund has submitted the operating information and financial information, up to a maximum of 25 AIVs or sub-funds or both.

The annual return must include:

- operating and financial information in respect of (1) each AIV, unless the AIV is itself registered as a private fund, and (2) each sub-fund; and
- structure information in respect of 'related fund entities' (such as AIVs, parallel funds and co-investment vehicles), including those registered as private funds.

Annual returns should be submitted through the private fund's auditor or such other designated person as may be approved by CIMA. The auditor or designated person will only be responsible for submitting each duly completed return received from the private fund to CIMA in a timely manner and will not be liable for the accuracy or completeness of the annual return submitted.

When completing the annual return, the private fund should have regard to any explanatory material issued by CIMA.

A private fund which has received capital contributions for the purpose of investment must confirm in the annual return that it has complied with sections 16 to 18 of the Private Funds Act (2021 Revision).

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Amendment Regulations

The Private Funds (Amendment) Regulations, 2021 provide that an operator of a private fund which has not received capital contributions from investors for the purposes of investment, must file a declaration with CIMA that attests to this fact within six months after the end of the financial year to which it relates. The form of the declaration is set out in the Schedule to the Regulations.

6. Updated CRS list of reportable jurisdictions

The DITC issued an updated CRS List of Reportable Jurisdictions on 1 March 2021 to include Albania and New Caledonia for exchanges in 2021.

7. Regulatory policies - local audit sign-off for mutual funds and private funds

On 3 March 2021, CIMA issued the following new regulatory policies:

- [Regulatory Policy - Local Audit Sign-off for Private Funds](#)
- [Regulatory Policy - Local Audit Sign-off for Mutual Funds and Mutual Fund Administrators](#)

A brief summary of both policies, which take a similar form, is set out below.

The policies apply to private funds and mutual funds/mutual fund administrators registered under the Private Funds Act (2021 Revision) or Mutual Funds Act (2021 Revision) respectively. They do not extend to foreign domiciled funds that are administered in Cayman, but not otherwise registered as foreign companies doing business in Cayman.

All private funds and mutual funds/mutual fund administrators must have their accounts audited and signed-off by an approved local auditor. Only auditors with a physical presence in Cayman will be approved. Local auditors must be appointed from CIMA's list of Approved Auditors (available [here](#)). CIMA does not require that all the audit work of the fund/administrator be carried out locally or solely by the approved local auditor.

The policies provide that annual audit and accounts must be prepared in accordance with IFRS or GAAP of the USA, Japan, Switzerland or a non-high risk jurisdiction. Audited accounts must be sent to CIMA within 6 months of the end of the financial year or within such extension as CIMA may allow.

CIMA may exempt a private or mutual fund from audit requirements for the whole or part of a financial year either absolutely or subject to conditions.

8. Companies Act amendments

The Companies (Amendment) (No. 3) Act, 2020 came fully into force on 1 March 2021 (with the majority of provisions in force from 1 February 2021).

This Amendment Act made the following amendments to the Companies Act (2021 Revision):

- The Customs and Border Control Service was added to the list of entities which may request information from the Registrar of Companies.
- A new Part XV introduced a prohibition on bearer shares. Bearer shares issued prior to the Amendment Act will become void and the Court will not permit a company which has been struck off from being reinstated where bearer shares are in issue.
- References to the Anti-Money Laundering Steering Group list of equivalent jurisdictions in the beneficial ownership provisions were replaced with references to jurisdictions that are "*designated as having measures for combating money laundering and the financing of terrorism which are equivalent to that of the Islands in accordance with section 5(2) of the Proceeds of Crime Law (2020 Revision)*".
- The penalty provisions were removed from s.279A (Request to provide additional information) of the beneficial ownership provisions.
- The beneficial ownership provisions were amended to permit CIMA, on the request of the competent authority, to disclose any information relating to a regulated company (or its subsidiary) which is exempt from the beneficial ownership requirements, where such company would be required to provide the information if the beneficial ownership provisions applied.
- Every company (other than an exempted company that does not hold a licence to carry on business) is now required to provide information to the Registrar of Companies on the nature of business conducted by on an annual basis.

9. Virtual asset service providers

The Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands were amended on 24 February 2021 to replace [Section 1 of Part IX](#) in relation to virtual asset service providers.

At the same time, CIMA issued a [Statement of Principles on Conduct of Virtual Asset Services](#) based on the following 12 principles:

- Honesty and integrity
- Fair treatment of customers
- Protection of customer data
- Protection and segregation of customer assets
- Maintenance of security systems
- Due skill, care and diligence
- Prevention, detection and disclosure of financial crimes
- Conflict of interest and unfair dealings
- Adequate resources
- Full disclosure
- Corporate governance and resilience
- Compliance with regulatory Acts

On 5 February 2021, the Ministry of Financial Services issued a [notice](#) advising the public that the enforcement provisions in the Virtual Asset Service Providers Act, 2020 came into force on 31 January 2021.

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10. FATF monitoring

On 25 February 2021, the Cayman Islands was 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 counter-proliferation financing (CPF) regimes. This list relates to jurisdictions that are actively working with the FATF to address strategic deficiencies in their AML/CFT/CPF regimes, and should not be confused with the FATF 'black list' of non-cooperative jurisdictions or the EU list of non-cooperative jurisdictions for tax purposes.

The FATF acknowledged that the Cayman Islands has met 60 out of 63 its recommendations, including all technical aspects of its most recent inspection. It was also noted that the Caribbean Financial Action Task Force (CFATF) has rated the Cayman Islands as compliant or largely compliant with 39 out of 40 technical compliance points. Nonetheless, the FATF determined that, as the Cayman Islands is a major financial centre with higher risks, it should be held to a higher standard, stating that they expect 'commensurate measures from countries that have higher risks'.

The three remaining action points, which the FATF assessed as partly met, relate to enforcement by CIMA and the Registrar of Companies, and to the prosecution of money laundering offences by the Cayman Islands Bureau of Financial Investigations and the Office of Director of Public Prosecutions. These are to be addressed by January 2022 (and, in the case of evidencing effective prosecutions, May 2022).

The Cayman Islands Government has committed to work with the FATF and the CFATF to further strengthen the effectiveness of its AML/CFT/CPF regime in order to meet the three action points within the timeframe. CIMA has correspondingly confirmed that it will continue to monitor regulated entities, taking prompt and robust action where appropriate.

Notably, the FATF does not require the application of enhanced due diligence measures to jurisdictions under increased monitoring. However, member jurisdictions are encouraged to take the listing into account in their risk analysis.

The Financial Crimes Enforcement Network (FinCEN) added the Cayman Islands to its 11 March 2021 Advisory. Going forwards, the EU may decide to add the Cayman Islands to its AML high risk lists. These developments could result in to Cayman Islands structures having to provide enhanced due diligence in certain circumstances.

11. Administrative fines for beneficial ownership failures

The Cayman Islands Ministry of Financial Services issued a [press release](#) on 15 February 2021, advising that the Registrar of Companies has begun imposing administrative fines for non-compliance with beneficial ownership requirements.

As at 1 February 2021:

- 19 administrative fines of US\$6,098 each have been levied against companies following failures to comply with warning letters. If such fines remain unpaid, or the company continues in its failure to comply, the Registrar of Companies will remove the company from the register.
- 18 warning letters have been sent to trust and corporate services providers for failure to file restrictions notices where companies have not provided beneficial ownership information.

12. Amendments to CIMA's Regulatory Handbook

The following amendments to CIMA's [Regulatory Handbook](#) were gazetted in March 2021:

- [Revisions to Volume 1 - "External Relationships" section](#); and
- [Revisions to Appendix DI \(Dealing with requests for assistance from an overseas regulatory authority\) and D1.1 \(Dealing with requests for assistance from a competent authority\)](#).