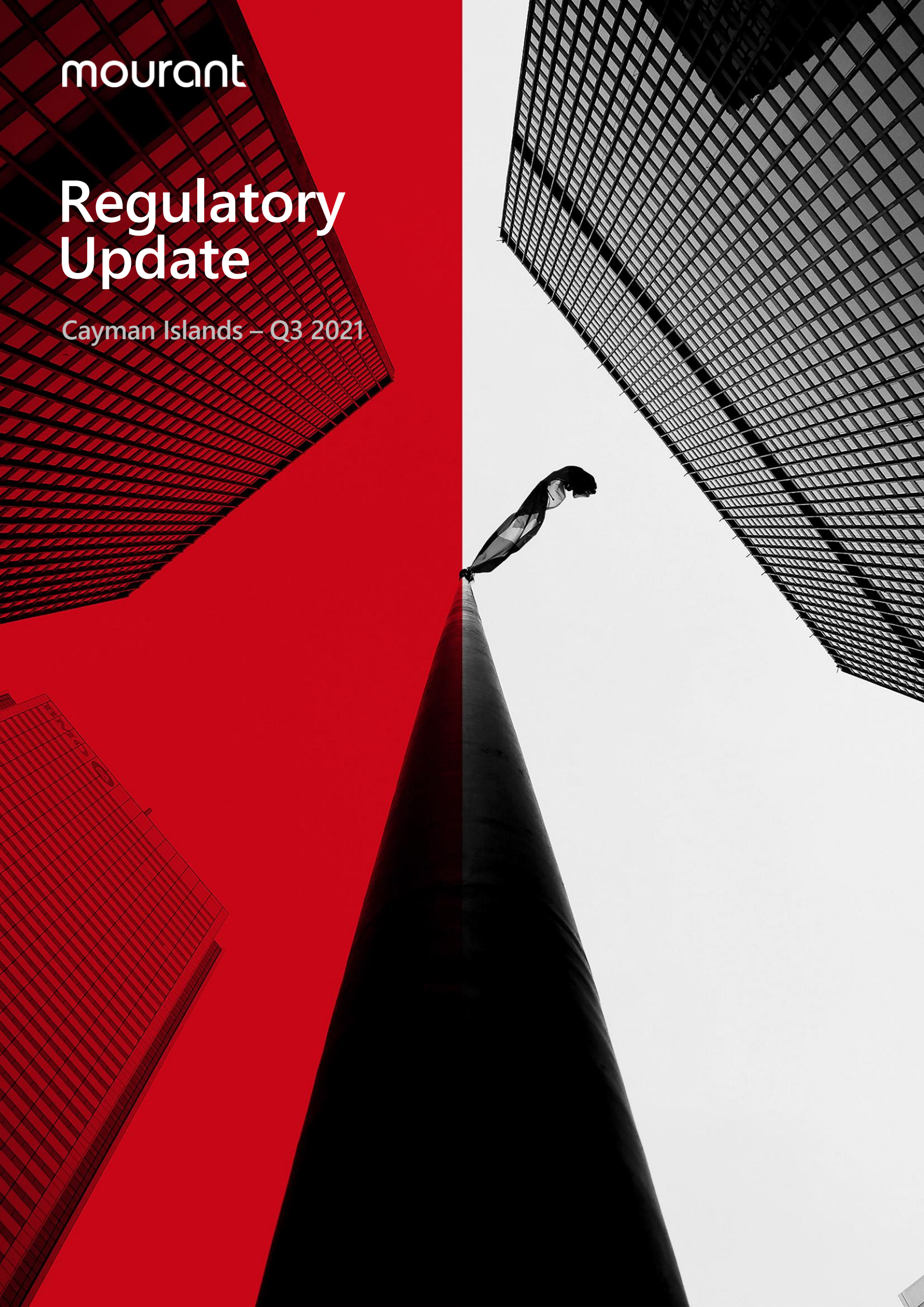


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Regulatory Update

Cayman Islands – Q3 2021



Quick Fire Updates

1. 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](#).

2. 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:

- o for partnerships, ELPs and foreign LPs formed after 1 July 2021, the date it commences the relevant activity; or
- o 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](#).

3. 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.

4. 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.

5. 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).

6. 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).

7. 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.

8. 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**

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9. 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.

10. CIMA Notice – AML officers

CIMA issued a [Notice](#) on 7 June 2021 reminding all licensees and registrants¹ 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.

11. 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).

12. FATF greylist update

As reported in our [Q2 2021 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'² 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.'*

13. 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.

¹ This obligation extends to all persons conducting 'relevant financial business', as defined under the Proceeds of Crime Act (2020 Revision)

² 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.

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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.

14. Onsite inspections – Top tips

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

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2021 MOURANT OZANNES ALL RIGHTS RESERVED