

mourant

# Regulatory Update

Cayman Islands – Q4 2022

[mourant.com](https://www.mourant.com)

# Quick Fire Updates

## 1. Governor issues General Licence for frozen funds under the Russia sanctions regime

On 4 October 2022, the Governor of the Cayman Islands issued a **General Licence (GL)** in relation to the applicable Russia sanctions regime. The GL was issued under Regulation 64 of the UK's Russia (Sanctions) (EU Exit) Regulation 2019, as extended to the Cayman Islands, with modifications, by the Russia (Sanctions) (Overseas Territories) Order, 2020 (**Modified Regulations**).

Under the GL, a 'Relevant Investment Fund' (or the fund manager on its behalf) may redeem, withdraw or otherwise deal with an investment interest of a non-designated person and make payments for basic needs, routine holding and maintenance and legal fees from frozen accounts. A 'Relevant Investment Fund' will be an investment fund whose assets are frozen under the Modified Regulations due to its assets being 50% or more owned or controlled by a designated person.

The GL permits the redemption of non-designated investors, subject to the fund's constitution and terms. Therefore, it does not allow redemption of any position owned or controlled, directly or indirectly, by a designated person.

The permissible payments for basic needs under the GL will include:

- audit and accounting fees;
- corporate and regulatory fees;
- corporate services and registered office fees;
- insurance premiums;
- director fees;
- professional and service provider fees,

together with the payment of reasonable legal fees.

The GL provides that such service providers will not breach the sanctions regulations by receiving such fees in exchange for providing the relevant services to the Relevant Investment Fund.

Where the GL is relied upon, the following notification requirements will apply:

- The Governor's Office must be notified by email as soon as practicable the first time the GL is relied upon.
- Thereafter, monthly reporting must be provided to the Governor's Office on the 16th of each month setting out the use of the GL in the preceding month.
- If the Relevant Investment Fund is regulated, CIMA must be provided with notice of use of the GL within 3 business days.

The GL takes immediate effect and will expire on **4 April 2023**.

## 2. CRS and FATCA reporting deadlines

The statutory deadline for the filing of CRS and FATCA reports for the 2021 reporting year was **31 July 2022**.

The statutory deadline for the filing the CRS Compliance Form for the 2021 reporting year was **15 September 2022**.

Any financial institutions which have not completed their reporting are urged to do so as soon as possible.

## 3. CRS and ES Enforcement Guidelines updated

The eagle-eyed among you may have seen that the CRS and economic substance (**ES**) Enforcement Guidelines first published in March 2022 were updated in July (CRS Guidelines only) and August 2022.

The key changes made to the Guidelines relate to Part 8 – Payment of Penalty, which sets out, in particular, the information required to be included in relevant correspondence, payment details and a new paragraph providing that the Tax Information Authority will issue a receipt of payment once a payment has been verified. Changes have also been made to the template notices included within Part 9 of the Guidelines.

## 4. CRS enforcement – Requests for information

Further to our **April Update** regarding enforcement of the CRS and economic substance regimes, we are aware that the Department for International Tax Cooperation (**DITC**) has been issuing requests for information and subsequent breach notices, where there has been a failure to respond to a request for information. It is very important not to miss these emails, along with the opportunity to respond.

See our **July Update** for more information.

## 5. Revised regulatory procedure for the deregistration of funds

In August 2022, the Cayman Islands Monetary Authority (**CIMA**) issued a new **Rule** on the Cancellation of Licences or Certificates of Registration for Regulated Mutual Funds and Registered Private Funds, together with related Regulatory Procedures for **Mutual Funds** and **Private Funds**.

The key changes relate to the timing of the deregistration process and the elimination of the option to place a fund in 'Licence under Termination' (**LUT**) or 'License under Liquidation' (**LUL**) status with CIMA. Previously, a fund in the process of winding down was able to be put in LUT or LUL status before it had made any final distributions and filed its final audit. If the fund was in LUT or LUL on or before 31 December in any year, the fund was eligible for a reduction (or in some cases, refund) of the annual registration fees for the following year.

The new Rule now requires a fund to notify CIMA within 21 days of ceasing, or formally intending to cease, to carry on business as a fund and then complete and file its audit before deregistration documents can be filed. Generally speaking, a fund is considered to cease carrying on business on the date stated within the relevant resolution or decision of the fund's operators or upon the appointment of a liquidator.

As LUT and LUL status are no longer available, the fund will be liable for registration fees, until it is deregistered by CIMA. Failure to notify CIMA within the 21 day period will result in an administrative fine.

The new Rule and Regulatory Procedures apply to any deregistration applications received after **17 August 2022**. Any

# Quick Fire Updates

funds that had LUT or LUL status on 17 August 2022 will remain to be treated under the previous regime.

## 6. FRA Notice – Red Alert on Russian sanctions evasion typologies

On 12 July 2022, the Financial Reporting Authority (FRA) issued a [Notice](#) relating to a 'Red Alert' issued by HM Treasury's Office of Financial Sanctions Implementation, the UK National Crime Agency and others relating to financial sanctions evasion typologies by Russian elites and enablers.

## 7. Change in distribution method for AML Surveys

On 19 August 2022, CIMA issued a [Notice](#) relating to a change in distribution methods for AML Survey forms. The Notice advises all regulated financial service providers (FSPs) that the AML inherent risk, the AML risk controls and the cash flow return forms will be combined into one annual AML Survey form which will be sent out to the email contacts listed by the FSPs with CIMA. Previously, the three separate forms were available via REEFS. Specific guidance notes as to the completion of the forms are available [here](#).

The surveys were sent out during September 2022, with the initial due dates having been extended in certain cases.

## 8. Updated economic substance guidance – tax residence overseas exemption

The Cayman Islands Department for International Tax Cooperation (DITC) has published an updated version 3.2 of the [Economic Substance for Geographically Mobile Activities Guidance](#) dated July 2022 (the [Guidance](#)), which replaces the previous version issued on 30 June 2021.

The Guidance has been updated in relation to entities that are not 'relevant entities' for the purpose of the economic substance (ES) legislation because they are tax resident outside the Cayman Islands (TRO). In particular, the Guidance now clarifies that, as a general rule, the Cayman Islands Tax Information Authority requires any entity claiming to be tax resident outside the Cayman Islands to provide documentary evidence to support the TRO claim as follows:

- To substantiate that the entity is TRO, sufficient proof includes one or more of the following documents:
  - certificates or letters issued by the competent tax authority of the other jurisdiction;
  - tax assessments, demands, or evidence of payment issued by the competent tax authority of the other jurisdiction;
  - tax returns submitted to the competent tax authority of the other jurisdiction; or
  - rulings issued by the competent tax authority of the other jurisdiction.

[and](#)

- To evidence that the entity is subject to the other jurisdiction's corporate income tax system, sufficient proof includes the following documents:
  - tax assessments, demands, or evidence of payment issued by the competent tax authority of the other jurisdiction;
  - tax returns submitted to the competent tax authority of the other jurisdiction;
  - confirmation that the entity is required to submit a corporate tax return to the competent tax authority of the other jurisdiction.

The updated Guidance further notes that claims of tax residence in certain jurisdictions will not be accepted, as those jurisdictions do not have a corporate income tax system. The named jurisdictions are Anguilla, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Turks and Caicos Islands and the United Arab Emirates.

In the absence of the evidence set out above, an entity will be regarded as a 'relevant entity' for the purposes of the ES legislation and the TRO exemption will not be applied.

## 9. New beneficial ownership guidance notes issued

The Cayman Islands Ministry of Financial Services & Commerce announced on 26 July 2022 that [Guidance Notes on Complying with Beneficial Ownership Obligations in the Cayman Islands](#) (the [BOR Guidance Notes](#)) have been issued by the Competent Authority. The BOR Guidance Notes, which are dated 18 July 2022, include the following topics: guidance on the beneficial ownership test, relevant changes and filing obligations for entities in liquidation or upon the death of a beneficial owner.

The Ministry's media release also reminded industry that:

- Amendments to Cayman's beneficial ownership legislation, requiring the filing of 'valid and unexpired' passport details, came into force on 10 June 2022.
- Failure to provide adequate, accurate and up-to-date beneficial ownership information may result in an administrative fine being assessed against an entity.

For more details regarding Cayman's beneficial ownership regime, see our [Guide](#).

## 10. Supervisory circular – Findings from on-site inspections of Registered Persons

CIMA issued a [Supervisory Circular](#) on 12 July 2022 setting out the key findings from recent on-site inspections of Registered Persons (RPs) under the Securities Investment Business Act (2020 Revision).

The Circular is based on the results of 53 inspections, where final reports were issued by CIMA between 24 October 2020 and 31 December 2021 and identifies the following key areas of weakness relating to compliance with the Cayman AML/CFT/CPF/TFS regime:

- **AML/CFT policies and procedures:** There were differing levels of weakness identified in relation to the different aspects of

# Quick Fire Updates

the policies and procedures required by the Cayman AML/CFT regime. The greatest levels of weakness identified by CIMA related to customer identification, the adoption of a risk-based approach (RBA) and internal reporting.

- **CDD and ongoing monitoring documentation:** 75% of the RPs inspected had weakness in their CDD and ongoing monitoring procedures.
- **Employee training and awareness programme:** 66% of RPs had weakness in their employee training and awareness programmes, with notable gaps including:
  - o lack of AML/CFT employee training, in-depth training for AML officers; and training for directors (or equivalent); and
  - o lack of records to evidence training undertaken.
- **Oversight of AML/CFT compliance function:** Common deficiencies noted by CIMA included:
  - o lack of appropriate board oversight of an entity's AML/CFT controls, policies and procedures;
  - o lack of evidence of the board approving key AML/CFT policies and procedures; and
  - o lack of documented corporate governance policies and procedures.
- **Independent AML/CFT Audit Function:** 47% of RPs indicated the following gaps in relation to the independent AML/CFT audit function:
  - o lack of policies and procedures with guidelines for an internal audit function; and
  - o lack of evidence of AML/CFT/CPF/TFS audits being conducted.
- **Outsourced AML/CFT compliance functions:** 45% of RPs indicated the following gaps in relation to the outsourcing of compliance functions:
  - o lack of documented outsourcing policies and procedures;
  - o lack of outsourcing agreements which clearly document the obligations of the parties;
  - o lack of risk assessments; and
  - o lack of oversight of outsourced functions by the board or its equivalent.
- **Internal reporting:** Key gaps identified in relation to internal reporting procedures include:
  - o deficiencies around reporting and record keeping requirements, including a log for enquiries from the FRA; and
  - o lack of designation of an independent Money Laundering Reporting Officer (MLRO)/Deputy MLRO.
- **Assessing risks and application of a RBA:** 42% of RPs lacked:
  - o a documented overall business risk assessment; and
  - o a documented RBA methodology explaining the application and process for undertaking customer risk assessments.
- **Record keeping procedures:** 28% of RPs had weaknesses in their records management systems.

In addition, CIMA reviewed sample customer files of each of the RPs inspected and noted the following statistics across the files reviewed:

Missing or inadequate CDD documentation	36%
Weakness in documentation of customer risk assessments	21%
Documentation of ongoing monitoring procedures	19%
Sanctions compliance	17%
Weakness in maintaining documentary evidence of source of wealth and/or source of funds	3%
Weakness in applying and implementing enhanced due diligence procedures for high risk customers	3%
Weakness in documenting of rationale for applying simplified due diligence procedures for low risk customers	1%

CIMA's expectation is that all RPs should:

- take note of the findings set out in the Circular
- take action to ensure that their AML/CFT compliance frameworks meet the standards prescribed; and
- undertake their own periodic assessments.

## 11. Supervisory circular – Climate Change, ESG and Sustainability

Following the issue of a [Supervisory Circular](#) on environmental, social and governance (ESG) considerations in April 2022 (referred to in our [Q3 update](#)), CIMA issued a further [Supervisory Circular](#) on 11 July 2022 relating to climate risk and ESG considerations; this time, with a focus on the insurance sector.

The Circular identifies ESG and climate risks as material risk considerations for the insurance sector (due to the direct impact on the insurability of assets as well as insurers' operations, investment objectives, reputation and potential business interruptions). It also notes the growing need for insurers to understand these risks and the impact on their risk management and corporate governance frameworks.

## 12. Supervisory circular – Clarifications to MDR (Pillar 3) Rules and Guidelines

CIMA issued a [Supervisory Circular](#) on 2 August 2022 to provide interim clarification regarding the Market Discipline Disclosure Requirements (Pillar 3) Rules and Guidelines which apply to category 'A' and 'B' Banks, whilst CIMA is in the process of making amendments to these Pillar 3 measures.

The interim clarifications relate to the independent attestation of Pillar 3 disclosures in internal and external audit reviews, liquidity disclosures and the reporting period for Pillar 3 disclosure reports.

The [Market Discipline Disclosure Requirements \(Pillar 3\) Rules and Guidelines](#) were gazetted on 17 August 2022 and further clarify that banks are required to make disclosures to CIMA only with effect from 1 September 2021. However, from 1 September 2022, banks must make disclosures public in line with the requirements of these Pillar 3 measures.

# Quick Fire Updates

## 13. Supervisory circular – Dividend payments and distributions

---

The Supervisory Circular- Dividend Payments and Distributions issued on 28 July 2022 reminds all licenced category 'A' and 'B' banks (excluding branches), money services businesses, registered building societies, cooperative societies and development banks, that CIMA approval is required prior to the payment of dividends, capital repayments and/or distributions.

## 14. Mourant Guides and Updates

---

Mourant has uploaded some new Updates and Guides to our website, as follows:

- Statutory mergers, schemes of arrangement and tender offers under Cayman Islands law - A comparison
- Cayman Court considers the Berkeley Applegate principle and clarifies grounds for refusing a liquidator's costs
- Cayman Islands' new restructuring officer regime is now in force
- Closed-ended private investment funds - A comparison (BVI and Cayman)
- Trends and developments - Aviation Finance & Leasing 2022: Cayman Islands
- Cayman's beneficial ownership register regime
- Mutual funds in the Cayman Islands
- Judicial Review in the Cayman Islands
- Cayman Islands STAR Trusts
- Cayman Islands Foundation Companies
- Cayman Islands Private Trust Companies

# Quick Fire Updates



**Hector Robinson KC**  
Partner  
Mourant Ozannes (Cayman) LLP  
+1 345 814 9114  
[hector.robinson@mourant.com](mailto:hector.robinson@mourant.com)



**James Broad**  
Partner  
Mourant Ozannes (Hong Kong) LLP  
+852 3995 5722  
[james.broad@mourant.com](mailto:james.broad@mourant.com)



**Sara Galletly**  
Partner  
Mourant Ozannes (Cayman) LLP  
+1 345 814 9233  
[sara.galletly@mourant.com](mailto:sara.galletly@mourant.com)