

Regulatory Update Q1



Welcome to Athena's quarterly industry update!

It is our pleasure to present this summary of the latest legal and regulatory developments in the Cayman Islands affecting the alternative investment industry for the first quarter of 2021. Most of the developments in this quarter served to refine the laws and regulations brought into effect in 2020 and provide additional information through supplements and guidance. Part of our mission at Athena is to provide proactive guidance to help our clients navigate the legal and regulatory minefield and this update serves as an overview of the items most relevant to our clients.

Below is look at the Q1 2021 regulatory developments in case you missed them:

Disclaimer: The information provided does not, and is not intended to, constitute legal advice, instead, the information herein is for general informational purposes only. Please contact your usual Cayman counsel for specific legal advice on any of the matters outlined below.

PRIVATE FUNDS - ANNUAL RETURNS AND REGULATIONS

On 25th March 2021, the Private Funds (Annual Returns) Regulations, 2021 (the **FAR Regulations**) and Private Funds (Amendment) Regulations, 2021 (**Amendment Regulations**) came into force.

The FAR Regulations set out the operating and financial information required to be submitted in the Fund Annual Return (**FAR**). In normal circumstances, the FAR must be submitted within six months after the end of the financial year to which it relates (or within any extension of that period). The FAR is still in the course of being developed and as a result the Cayman Islands Monetary Authority (**CIMA**) issued an industry notice stating that the deadline for the first filing of audited accounts and the FAR has since been extended to 30 September 2021 – see our client alert on this [here](#).

In the industry notice, CIMA clarified that Private Funds will not be subject to penalties for non-compliance with the annual audit filing deadlines prior to the revised 30 September 2021 deadline.

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The fee for filing the FAR will be:

- CI\$300 (US\$366); and
- An additional CI\$150 (US\$183) for each:
 - a) Alternative investment vehicle (**AIV**) (except where such AIV is registered as a private fund); and
 - b) Sub-fund

The general information, operating and financial information together with structure information in respect of related fund entities that is required to be included in the FAR is set out in the [FAR Regulations](#).

Annual Returns should be submitted through the auditor of the Private Fund or such other person designated by the Private Fund as may be approved by CIMA. In each instance clients should be clear as to which party is responsible for filing the FAR (usually the auditor) and which party is separately responsible for paying the filing fee noted above.

The Amendment Regulations add provisions to the Private Funds Regulations, 2020 requiring a declaration regarding capital contributions. An operator of a Private Fund which has not received capital contributions from investors for the purposes of investment must file a declaration that attest 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 Amendment Regulations [here](#).

REGULATORY POLICIES: LOCAL AUDIT SIGN-OFF FOR MUTUAL FUNDS AND PRIVATE FUNDS

CIMA issued two new regulatory policies on 3 March 2021 as follows:

[The Regulatory Policy – Local audit Sign-off for Private Funds](#) established CIMA's policy for Private Funds and was issued further to section 13 (1) of the Private Funds Act (as amended). The objective of the policy is to ensure that Private Funds are aware of CIMA's requirements on local audit sign off and that auditors are aware of their obligations to CIMA.

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All private funds must have their accounts audited and signed-off by an approved local auditor and only auditors with a physical presence in the Cayman Islands will be approved. The list of Approved Auditors is available [here](#). CIMA does not require that all the audit work be carried out locally or solely by the approved auditor.

The policies provide that the annual audit and accounts of a Private Fund must be prepared in accordance with International Financial Reporting Standards or the GAAP of the United States of America, Japan, Switzerland or a non-high risk jurisdiction.

[The Regulatory Policy – Local Audit Sign-off for Mutual Funds and Mutual Fund Administrators](#) establishes CIMA’s regulatory policy on local audit sign off for Mutual Funds and Mutual Fund Administrators and was issued pursuant to the Mutual Funds Act (as amended). This takes a similar form to the policy document for Private Funds noted above.

CIMA may exempt a Private Fund or a Mutual Fund from audit requirements for the whole or part of a financial year either absolutely or subject to conditions.

AMENDMENTS TO THE COMPANIES ACT

The Companies (Amendment) (No. 3) Act, 2020 came fully into force during Q1 2021 with the last remaining sections coming into force on 1st February and 1st March 2021.

The provisions most relevant to our clients are as follows:

- References to the list of equivalent jurisdictions in the Anti-Money Laundering Regulations (2020 Revision) 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 and in accordance with section 5(2) of the Proceeds of Crime Act.”
- The provisions relating to disclosure of beneficial ownership information by CIMA were amended to permit CIMA, on the request of a 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 required particulars if the beneficial ownership provisions applied.

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- The penalty provisions were removed from section 279A (Request to provide additional information) of the beneficial ownership provisions.
- The information required to be submitted on an annual basis by every company (other than an exempted company that does not hold a licence to carry on business) is now extended to include the requirement to provide information to the Registrar of Companies on the nature of business conducted by the company.

CIMA IMPOSES DISCRETIONARY ADMINISTRATIVE FINES

CIMA continues to impose administrative fines for breaches to the Anti Money Laundering Regulations (AML Regulations). In March 2021, CIMA imposed a discretionary administrative fine of CI\$72,800.00 on a licensee pursuant to the Monetary Authority Act for breaches of the AML Regulations and a much greater fine has since been imposed on another licensee following a reported protracted history of non-compliance with the AML Regulations.

As far as we are aware, the fines to date have been focused on non-compliance on the part of licensees, rather than, for example, registered funds. However, we continue to keep our clients updated regarding the administrative fines regime to ensure that all clients are aware of CIMA's enforcement powers and the sanctions that could be applied where a person breaches the Monetary Authority Act, any other regulatory law or the Anti-Money Laundering Regulations.

INTERNATIONAL INITIATIVES - Financial Action Task Force

In February 2021, the Cayman Islands was included on the 'grey list' compiled by the Financial Action Task Force (**FATF**) of "jurisdictions under increased monitoring" (**Monitoring List**) in relation to their AML, CFT and counter-proliferation financing (**CPF**) regimes pending completion of the final three actions, having been found compliant with 60 of their 63 recommendations. This list relates to jurisdictions that are actively working with the FATF to address strategic deficiencies in their AML/CFT/CPF regimes. It should be noted that the Monitoring List is not the same as the FATF 'black list' of non-cooperative jurisdictions or the EU list of non-cooperative jurisdictions for tax purposes.

It is important to note that the Caribbean Financial Action Task Force rated the Cayman Islands as compliant or largely compliant with 39 out of 40 technical compliance requirements. The fact

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that Cayman was recognised as being compliant or largely compliant in this way as well as having satisfied 60 out of 63 of the effectiveness recommendations, illustrates Cayman's commitment to AML / CFT Effectiveness – see this press release [here](#). Further, the FATF President explained Cayman's inclusion on the Monitoring List on the basis that "the Cayman Islands are a major financial centre and we expect commensurate measures from countries that have higher risks". In essence, Cayman is being held to a higher standard.

The FATF has given the Cayman Islands an action plan, which will need to be completed by the time of the next review which is scheduled for October 2022. The Cayman Islands' own action plan and compliance frameworks supporting the action items already exist. The Cayman Islands Government has confirmed that it is already making progress in completing the remaining three recommended actions to ensure the continuing effectiveness of the Cayman Islands' legal framework in terms of compliance and enforcement in detecting and deterring financial crime.

Going forward, the EU may decide to add the Cayman Islands to its AML high risk lists. This could result in Cayman Islands structures having to provide enhanced due diligence in certain circumstances. However, the inclusion of the Cayman Islands on the Monitoring List currently has limited practical consequences for investors or clients using Cayman Islands structures.

If you would like further details or to discuss any of the updates herein, please contact us below:

ALLISON NOLAN

Founder and Managing Director
Email: anolan@athena.ky
Direct: +1 (345) 943 1122
Mobile: +1 (345) 323 0111

SABRINA FOSTER

Director, Governance Services and General Counsel
Email: sfoster@athena.ky
Direct: +1 (345) 743 1124
Mobile: +1 (345) 527 2211