

Regulatory Update



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 second quarter of 2021. Most of the developments in this quarter served to refine laws and regulations already in effect, providing additional information through supplements and guidance in anticipation of filings as well as ongoing requirements. 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 a look at the Q2 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 RETURN FORM AND DEADLINE

The Cayman Islands Monetary Authority ("CIMA") has now confirmed the Fund Annual Return ("FAR") Form for funds registered under the Private Funds Act (Revised) ("Private Funds") is now available.

The extended deadline for filing audited financial statements and the FAR form is 30 September 2021. See our [Q1 Regulatory Update](#) and [Client Alert](#) for more information. It should be noted that a Private Fund which had a 31 March financial year end would need to file its FAR for both 2020 and 2021 financial year ends by 30 September 2021.

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](#).

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AML: CIMA REMINDER – AML OFFICERS

CIMA issued an [industry notice](#) on 7 June 2021 reminding all persons carrying out relevant financial business (as defined in the Proceeds of Crime Act (Revised)) of their obligation 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 as set out in the Anti-Money Laundering Regulations (2020 Revision) (as amended, the “AMLRs”) and will act in accordance with them.

The industry notice, amongst other points, 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 (meaning the AML officer is the final decision maker as to whether a suspicious activity report is filed);
- able to have access to all relevant materials in order to make an assessment as to whether the activity is or is not suspicious; and
- able to dedicate sufficient time for the efficient and effective discharge of their respective functions.

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

AML: CAYMAN SANCTIONS LEGISLATIVE CHANGES

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

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Further information can be found in 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.

As a result of the UK's exit from the EU, the sanctions framework in the UK was amended on 31 December 2020 and, with the UK implementing the substance of the EU sanctions regulations into UK law, this was extended to the Cayman Islands through new Orders in Council. The updated Cayman Islands sanctions legislation presents an opportunity for entities, especially those subject to the Cayman Islands AML Regulations, to evaluate their current sanctions compliance arrangements. CIMA recently reported that recent inspections had identified weaknesses in documentation of initial and ongoing sanctions screening in customer files, including policies and procedures relating to sanctions compliance generally.

ECONOMIC SUBSTANCE REGIME: INCLUSION OF PARTNERSHIPS

Effective 30 June 2021, the Cayman Islands economic substance ("ES") regime's definition of a 'relevant entity' under the International Tax Co-operation (Economic Substance) Act (2021 Revision) was expanded to include all types of Cayman Islands partnerships (exempted limited partnerships ("ELPs"), general partnerships, limited partnerships and foreign limited partnerships ("LPs")). Consequently Cayman Islands partnerships will be required to make an annual notification to the Cayman Tax Information Authority ("TIA") through their corporate service provider (typically a registered office service provider).

Entities which conduct relevant activities are required to file an economic substance report for the relevant period. The ES test in relation to a relevant activity must be satisfied by Partnerships, ELPs and foreign LPs:

- Formed after 1 July 2021, the date it commences the relevant activity;
- In existence prior to 1 July 2021, by 1 January 2022.

The earliest such filing is likely to be required for existing partnerships is March 2022, however this deadline is currently under consultation and may be extended.

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ECONOMIC SUBSTANCE REGIME: UPDATED GUIDANCE/PRACTICE POINTS

The TIA adopted updated Economic Substance Guidance Notes (version 3.1) on 30 June 2021, which contains a new Appendix reflecting the application of the ES regime to general partnerships, limited partnerships, ELPs and foreign LPs.

The Caymans Islands Department for International Tax Cooperation (“DITC”) also updated the ESN Practice Points on 3 June 2021, including specific guidance in terms of:

- ES notifications and terminating entities; and
- The ES notification process and the amendment of the ES notification.

ECONOMIC SUBSTANCE REGIME: ES NOTIFICATIONS FOR INVESTMENT FUNDS

Where possible, an ‘investment fund’ entity should provide its CIMA, FI or GIIN identifying number on the ES notification. Should an entity not have an identifying number because 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.

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

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

If you would like further details or to discuss any of the updates herein, please contact us on connect@athena.ky