

Regulatory Update Q3



Welcome to Athena's quarterly industry update!

It is our pleasure to present this summary for the latest legal and regulatory developments in the Cayman Islands affecting the alternative investment industry for the third quarter of 2021. Our mission at Athena in this regard 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 Q3 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 – RELATED FUND ENTITY FILINGS

The Cayman Islands Monetary Authority ("CIMA") issued a [Notice](#) advising that a new Related Fund Entity (RFE) form for private funds was available for use via CIMA's Regulatory Enhanced Electronic Forms Submission (REEFS) portal.

A related fund entity in relation to a private fund means an entity established by or on behalf of the fund's promoter which may account for certain regulatory, tax or other structuring needs of one or more groups of persons/investors and which may not itself meet the definition of a "private fund" under Cayman Islands law, per the Private Funds (Annual Returns) Regulations 2021. This includes:

- a parallel fund (i.e. a parallel investment vehicle generally formed to invest and divest in the same investments at the same time as the main private fund);
- an alternative investment vehicle; or
- a co-investment vehicle (i.e. a pooled investment vehicle which invests in one or more transactions alongside the private fund).

Regulatory Update Q3



PRIVATE FUNDS – DEADLINE FOR PRIVATE FUND FAR AND RFE FORMS

CIMA issued a [Notice](#) providing a further extension to the deadline for filing the private fund annual return (FAR) and RFE forms (together the “Forms”).

All private funds with a 2020 or a 2021 financial year end up to 31 March 2021 must submit the FAR and RFE forms by **31 October 2021**. CIMA has stated that no further extensions will be granted.

To note, the filing due date for the Forms for private funds with a financial year end of 30 April 2021 and later will continue to be 6 months following such financial year end.

FUND LIQUIDATIONS – DEADLINES

Cayman Islands private funds and mutual funds that intend to voluntarily liquidate at the end of 2021 should commence the liquidation process if they wish to avoid incurring liability for annual government and registration fees due in January 2022.

Relevant deadlines to bear in mind for funds wishing to liquidate prior to the end of 2021:

- **CIMA Filings: 31 December 2021**

A CIMA-regulated entity (including registered funds) being liquidated may be able to apply to CIMA to have its status changed to ‘Licence under Termination’ or ‘License under Liquidation’.

Applications must be filed by 31 December 2021 to achieve a reduction in the 2022 annual CIMA fee.

- **AEOI and Economic Substance Filings: 31 December 2021**

FATCA or CRS Reporting Financial Institutions, as well as in-scope relevant entities under the Cayman Islands economic substance regime will be required to

Regulatory Update Q3



further report to the Cayman Islands Tax Information Authority if the in-scope entities are still in existence for any part of 2022.

All requirements for voluntary liquidation must be complied with and final meetings held.

- **Annual Registration/Government Fees: Prior to 31 January 2022**

To avoid payment of the 2022 annual registration/Government fees for an entity, all relevant filings must be made with the appropriate Registrar, the liquidator holding the final general meeting (for a company) or the final dissolution notice filed (for an exempted limited partnership) on or before 31 January 2020.

Only those exempted limited partnerships not subject to automatic termination as specified in their limited partnership agreements have the flexibility to choose the timing of their liquidation.

ECONOMIC SUBSTANCE REGIME – 2020 REPORTING DEADLINE

Firstly, a quick reminder on the subject of economic substance from our previous updates; “investment funds” do not fall within the definition of “relevant entity” for the economic substance regime and currently do not have to meet the economic substance requirements. However, all Cayman companies, LLCs and LLPs are required to make an annual notification for economic substance purposes as a prerequisite to filing the annual return.

Relevant entities which are subject to the economic substance (ES) test under the Cayman Islands ES legislation must make a return to the Tax Information Authority (TIA) within twelve months after the last day of each financial year of the entity, commencing on or after 1 January 2019.

Those entities that are required to report under the Cayman ES regime and conducted a relevant activity in 2020 will need to consider the timing of filing of the 2020 ES return.

Regulatory Update Q3



Those entities which are required to report for 2020 and which have the calendar year as their financial year will need to file their 2020 ES return by 31 December 2021.

ECONOMIC SUBSTANCE REGIME – ECONOMIC SUBSTANCE NOTIFICATIONS (ESNs)

The Cayman Islands Department for International Tax Cooperation (“DITC”) released an [Updates Bulletin](#) on 3 September 2021.

The Bulletin notes that relevant partnerships must now submit ESNs on an annual basis, relevant partnerships include the below per the extension on 30 June 2021:

- Cayman Islands partnerships (including limited 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).

The following guidance was provided regarding timing of the submissions:

- For any partnership that existed prior to 30 June 2021, the first ESN required to be submitted will be for the 2022 ESN year. The ESN for the 2022 ESN year will be due by 31 March 2023.
- For any partnership that came or comes into existence on or after 30 June 2021, the first ESN required to be submitted will be determined by the date on which their first financial year commences. For example, if an ELP was formed on 1 July 2021 and its first financial year covers the period from 1 July 2021 to 30 June 2022, the first ESN year will be the 2021 ESN year. The ESN for the 2021 ESN year will be due by 31 March 2022.

The DITC issued on 3 September 2021 [ESN Practice Points](#) reflect the above update.

Regulatory Update Q3



ECONOMIC SUBSTANCE REGIME – ESN CHANGES

Information collected on the ESNs from 2021 forwards, will include:

- Where an entity claims that it is tax resident outside the Cayman Islands, it will be required to confirm the date of its financial year end on the ESN.
- Where an entity is an 'investment fund' for the purposes of the economic substance regime but does not itself have a CIMA registration, FI or GIIN number, the entity will be required to respond 'Yes/No' to the following:

*'The CIMA, FI and/or GIIN information provided below belongs to another investment fund that directly or indirectly invests or operates through the Entity'.
If 'Yes', the name and jurisdiction of the investment fund must be provided.*

We will continue to keep you updated on the legal and regulatory environment as things come into force. If you would like further details or to discuss any of the updates herein, please contact us on connect@athena.ky or your usual Athena contact.