

Cayman Islands Funds and Regulatory Update: Q1 2021

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The first quarter of 2021 saw a continuing refinement of the various laws and regulations which were enacted in the Cayman Islands during 2020 via anticipated supplements and guidance, a trend which we noted in our previous quarterly briefing. This update details these changes and includes additional information on more general regulatory matters of interest to our funds clients. This briefing also serves as a useful reference guide in respect of key upcoming deadlines. Our 'key dates' calendar (available on request) continues to be updated to reflect any revised deadlines.

Key Takeaways

CRS: The reporting deadline for the 2019 CRS Compliance Form has been extended to **15 September 2021**, the same date

as the

2019 CRS Compliance Form deadline extended and FATCA reporting for 2019 and 2020

as the reporting deadline for the 2020 CRS Compliance Form. The DITC Portal is now open for any outstanding 2019 CRS returns. FATCA: Outstanding FACTA returns should be uploaded to the DITC Portal as soon as possible. The DITC Portal is expected to begin to accept FATCA returns for the 2020 reporting period in May 2021.

Entities that are required to file an economic substance report (ESR) for the first economic substance

Economic Substance reporting deadline and ESN submission for terminating entities

reporting period commencing in 2019 are reminded that the deadline for submission is **30 April 2021** (the deadline for entities claiming tax residency outside Cayman or conducting intellectual property business having passed on 28 February 2021). The DITC has advised industry that entities that intend to terminate, migrate to another jurisdiction, deregister as a foreign company or be merged or consolidated with one or more other

entities in 2021 are now able to submit the annual economic substance notification (**ESN**) for financial years commencing in 2021. The filing of an **ESN** for each outstanding year is a pre-requisite to such entities being deactivated on the General Registry's system.

The Cayman Islands Monetary Authority (**CIMA**) has issued an industry notice regarding fund annual return (**FAR**) filings for private funds registered under the Private

CIMA extends deadline for first filing of Private Funds audited accounts and FAR Form to 30 September 2021

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Funds Act
(Revised)
**(Private
Funds)**,
confirming
that the
deadline for
the first
filing of
audited
accounts
and the
associated
FAR form by
all Private
Funds has
been
extended to
**30
September
2021.**
Where a
Private Fund
has not yet
drawn down
capital for
the purposes
of
investment,
it must,
instead of a
FAR, file a
declaration
with CIMA
which
attests to
this fact
within six
months of
the end of

the relevant financial year.

The Registrar of Companies has begun issuing penalties and warning letters to companies and corporate services providers that fail to submit accurate beneficial ownership information under Cayman's beneficial ownership regime. Cayman entities are advised to confirm with their Cayman service provider that their supplied beneficial ownership information is up-to-

Beneficial ownership regime – administrative penalties

date, or in the case of investment funds and other entities registered with, or licensed by, CIMA, that appropriate exemption declarations have been submitted.

2019 CRS Compliance Form deadline extended and FATCA reporting for 2019 and 2020

In an [industry advisory](#) dated 22 January 2021, the Department for International Tax Cooperation (DITC) announced that the reporting deadline for the 2019 CRS Compliance Form on the DITC portal (**DITC Portal**) had been extended to **15 September 2021**, in line with the 2020 CRS Compliance Form submission deadline. The deadline had been extended to accommodate the availability of a bulk upload option in CSV format and a [further update](#) issued by the DITC on 15 April 2021 (**DITC Update**) confirmed that DITC Portal is now open for CRS reporting and such reporting must now be made using the new CRS XML Schema. Further details are contained in the DITC Update. In addition, the list of 2021 CRS Reportable Jurisdictions was published on 1 March 2021. Albania and New Caledonia have been added as Reportable Jurisdictions for the 2020 Reporting Period.

The DITC has requested that outstanding FACTA returns should be uploaded to the DITC Portal as soon as possible and that the DITC Portal will begin to accept FATCA returns for the 2020 reporting period in May 2021.

The DITC Update provides the following table of reporting deadlines for the 2019 and 2020 reporting periods:

Registration (notification)	30 April 2021
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2019 & 2020 CRS Reporting	31 July 2021
2019 & 2020 CRS Filing Declaration	31 July 2021
2019 & 2020 FATCA Reporting	31 July 2021
2019 & 2020 CRS Compliance Form	15 September 2021

Clients should note that the new CRS Compliance Form will require entities to confirm, among other items, who carries out the entity's Cayman Islands anti-money laundering obligations (including details as to their geographic location and the standards applied) and that the entity not only has written CRS policies and procedures in place, but that such policies and procedures are both implemented and complied with. In this context, clients should ensure that both their anti-money laundering and CRS policies and procedures are fully up to date. Do reach out to your usual Ogier contact if you would like assistance in ensuring compliance in this area.

The DITC has reminded users of the importance of ensuring that all Cayman Islands companies, partnerships and trusts have been correctly classified for the purposes of the CRS and/or FATCA Regulations (**Regulations**), which classifications will be cross-checked by the DITC with other data sources. It is an offence under the Regulations for Financial Institutions to fail to notify the DITC of their correct classification or to fail to comply with other obligations under the Regulations. The DITC has stated that it will consider appropriate compliance and enforcement action where mis-classification and non-compliance is discovered, including administrative penalties or other sanctions.

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Economic Substance reporting deadline and notification requirements for liquidating entities

As mentioned in our previous regulatory briefing, the submission window for Cayman corporate entities, including investment funds, to submit the 2020 annual economic substance notification (ESN) is open and will remain so throughout 2021. All ESNs for 2020 should have been filed by the 31 January 2021 deadline as a prerequisite to filing the annual return with the Cayman Registrar of Companies or Limited Liability Companies (**Registrar**) at the General Registry, but corrections are able to be made for the remainder of the calendar year. As set out in the DITC's

ESN Practice Points Guide any corporate entity which intends to terminate, migrate to another jurisdiction, deregister as a foreign company or be merged or consolidated with one or more other entities, will be required to submit an ESN for the current year before it becomes deactivated on the General Registry's system. In order to facilitate this the DITC has advised industry that the submission window for ESNs for the financial year commencing in 2021 is also now available for such entities. Ogier can assist with filing any such 2021 ESNs; please do contact us at an early stage in the process to ensure this requirement does not hold up any such transactions.

Entities (**Relevant Entities**) which conducted relevant activities (such as fund management business or holding company business) (**Relevant Activities**) during the first economic substance reporting period (**2019 Period**, being the first financial year of each Relevant Entity commenced on or after 1 January 2019) are required to file an economic substance report (**ESR**) for that period. The deadline for submission of the ESR is **30 April 2021** (noting that the deadline for entities which conducted intellectual property business during that period had an earlier deadline of 28 February 2021). Any Relevant Entity that does not yet have this process in hand should contact Ogier and/or its corporate service provider as a matter of urgency. **Investment funds are excluded from the definition of Relevant Entities and therefore there is no requirement for such entities to submit an ESR.**

Relevant Entities that are conducting Relevant Activities and filing the Form for an Entity Tax Resident in another Jurisdiction (**TRO Form**) in place of an ESN, can do so on the DITC Portal. The deadline for submission of TRO Forms for the 2019 Period was 28 February 2021. Functionality to allow TRO Forms to be submitted for successive reporting periods is in the process of being added to the DITC Portal. Currently, any attempt to submit a TRO Form for a successive reporting period will be rejected. The submission process will be simplified where no changes have taken place since the last reporting period, such that effectively filing a TRO Form will be a one-time event with confirmation of no-change since the last filing being submitted for subsequent periods. The DITC has also indicated that it will be assessing the validity of evidence of tax residence in a foreign jurisdiction submitted to it and it seems that mere confirmation of a non-Cayman Tax Identification Number or a letter from a service provider, such as a tax advisor, will generally not be sufficient.

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CIMA extends deadline for first filing of Private Fund audited accounts and FAR form to 30 September 2021

The Private Funds (Annual Returns) Regulations, 2021 (**FAR Regulations**) which set out the operating and financial information required to be submitted in the Fund Annual Return (**FAR**)

for private funds registered under the Private Funds Act (Revised) (**Private Funds**) on an annual basis, were published on 25 March 2021. On 19 April 2021, the Cayman Islands Monetary Authority (**CIMA**) issued an industry notice, clarifying that, while the FAR Regulations have now been published, CIMA do not expect to have the FAR form ready for submission by Private Funds until June 2021 and, accordingly, the deadline for the first filing of audited accounts and the associated FAR form by all Private Funds has been extended to **30 September 2021**. See our client briefing on CIMA filing deadlines here. Absent this extension, a Private Fund would generally be required to file its FAR form within six months of each financial year end falling after 7 February 2020. It should be noted that as a consequence of this extension, a Private Fund which has a 31 March financial year end would need to file its FAR for both the 2020 and 2021 financial years on 30 September 2021.

The CIMA notice also makes clear that Private Funds will not be subject to penalties for non-compliance with annual audit filing requirements prior to the revised 30 September 2021 deadline.

The FAR fee will be:

- CI\$300 (US\$366); and
- an additional CI\$150 (US\$183) for each sub-fund and each alternative investment vehicle (**AIV**), save that where the AIV is itself registered as a Private Fund there will be no double-counting.

The operating and financial information contained in the FAR must be given in respect of the Private Fund, each sub-fund and each AIV (except where the AIV is itself registered as a Private Fund). In addition, the FAR will include information on the Private Fund's structure, to include the names of all 'related fund entities' and, where such 'related fund entities' are regulated outside of the Cayman Islands, certain details regarding their overseas regulation. 'Related fund entities' include vehicles such as AIVs, parallel funds and co-investment vehicles, including where these are registered as Private Funds in their own right.

The FAR must be submitted by the Private Fund's auditor (or such other designated person as may be approved by CIMA) and includes a declaration, by the Private Fund, that it has complied with section 16 (valuation), 17 (safekeeping) and 18 (cash monitoring) of the Private Funds Act (Revised) during the year reported upon.

Where a Private Fund has not yet drawn down capital for the purposes of investment then rather than a FAR, it must instead file a declaration with CIMA which attests to this fact within six months of the end of the relevant financial year. The form of the declaration is set out in FAR Regulations.

The extension relates only to the FAR forms for Private Funds. For the avoidance of doubt,

FAR forms relating to open-ended mutual funds registered under the Mutual Funds Act (Revised) (Mutual Funds) must still be filed within six months of the relevant financial year end.

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Beneficial ownership regime – administrative penalties

The Cayman Islands Ministry of Financial Services issued a [press release](#) on 15 February 2021 informing industry that the Registrar has begun issuing penalties and warning letters to companies that fail to submit accurate beneficial ownership information under Cayman's beneficial ownership regime (**UBO Regime**).

Entities are therefore advised to check with their corporate services providers (ie, registered offices) that their beneficial ownership information is up to date.

It should be noted that Mutual Funds, Private Funds and Cayman investment managers that are registered persons under the Securities and Investment Business Act (Revised) are classified as out-of-scope of the UBO Regime. However, such entities are required to submit confirmation of their exempt status to their Cayman corporate services provider (who will in turn submit such information regarding such confirmation to the Registrar).

Please contact your usual Ogier attorney or any of the contacts listed in this briefing for advice concerning any of the above matters.

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Regulatory information can be found under [Legal Notice](#)

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