

Cayman Islands Funds and Regulatory Update: Q1 2022

Newsletters - 31/03/2022

Over the first quarter of 2022, there have been a number of notices issued by the Cayman Islands regulatory authorities. We are pleased to provide this briefing, which acts as a useful reference guide, detailing a round up of the regulatory changes and guidance issued over the last quarter for your convenience.

Summary of recent Cayman regulatory notices

In a [notice](#) dated 24 February 2022 and a [notice](#) dated 16 March 2022, the Cayman Islands Monetary Authority (CIMA) reminded all financial service providers of their obligations relating to the

CIMA's notices on Russian sanctions

recent targeted financial sanctions which have been imposed. Cayman funds and any service provider they rely upon as part of their sanctions compliance procedures (such as their managers and administrators) should ensure that they have in place robust policies and procedures to meet their obligations in relation to any economic sanctions imposed by the United Kingdom (extended to Cayman as a British Overseas Territory).

The Cayman Islands Tax Information Authority (TIA) has issued new guidelines ([CRS Enforcement](#)

New enforcement guidelines for CRS and economic substance

Guidelines and
ES

Enforcement
Guidelines)

setting out and clarifying the TIA's principles and processes for taking enforcement action in relation to infringements under the Cayman Islands CRS and economic substance frameworks. This includes the imposition of administrative penalties of up to US\$121,950 [1] for certain reporting failures.

CIMA has advised that an updated version of the Fund Annual Return (**FAR**) form for private funds is scheduled to be released; this will will

combine the

CIMA updates Fund Annual Return form for private funds

combine the existing private fund FAR form and the Related Fund Entity form. The updated FAR form should be utilised for all financial year-ends of 31 December 2021 and beyond.

CIMA updates the audit exemption policy for private funds

CIMA has amended its regulatory policy for exemption for audit requirements for private funds to clarify that the policy does not apply to private funds which are yet to receive capital contributions.

CIMA's notices on sanctions

In a [notice](#) dated 24 February 2022 and a [notice](#) dated 16 March 2022, the Cayman Islands Monetary Authority (CIMA) reminded all financial service providers of their obligations relating to the recent targeted financial sanctions which have been imposed. Cayman funds and any service provider they rely upon as part of their sanctions compliance procedures (such as their managers and administrators) should ensure that they have in place robust policies and procedures to meet their obligations in relation to any economic sanctions imposed by the

United Kingdom (extended to Cayman as a British Overseas Territory) (**Sanctions Orders**).

The CIMA notices set out legal obligations under the Sanctions Orders and steps that should be taken to ensure compliance. A few key considerations for Cayman funds, to ensure the fund's ongoing compliance with sanctions obligations, include:

- **Screening:** contact your administrator and/or review your administration service agreement and subscription agreements to check that adequate sanctions screening procedures are in place to identify any investors or beneficial owners that are designated persons that may be named in any Sanctions Orders (or any red flags from screening which suggest a fund interest may be owned, held or controlled by designated persons, even indirectly) and therefore subject to an immediate and broadly defined asset freeze and a prohibition on making funds or economic resources available to or for the benefit of the designated persons. With respect to downstream investment activity, you should consider screening any Russian securities, investment counterparties and fund service providers (including banks). Although not directly applicable under Cayman law, Cayman funds should also make themselves aware of any sanctions lists issued by the European Union, the United Nations or the United States, all of which should form part of an institution's regular sanctions screening processes
- **Reporting:** ensure that arrangements are in place to consider any sanctions reporting obligations to Cayman's Financial Reporting Authority (**FRA**), including by way of a compliance reporting form
- **Tracking of updates:** ensure that you are keeping up to date with any new or amended Sanctions Orders issued, and additions to the two lists of designated persons maintained by the HM Treasury's Office of Financial Sanctions Implementation as these will apply in the case of a Cayman fund. A current list of all Sanctions Orders can be found on the FRA's website and entities should subscribe to the FRA's notification service to be alerted to any new sanctions notices issued
- **Cyber security:** consider reviewing the robustness of the cyber security arrangements of the fund's service providers in light of the heightened risk from cyber attacks, and generally be more diligent and careful given the likely upsurge in malicious cyber activity
- **Subscription documents:** ensure that appropriate sanctions related representations, warranties and liability exculpations are obtained with respect to the investor and any person controlling or controlled by the investor. As well as providing contractual recourse to the fund, this helps the fund establish whether there is any cause to suspect a sanctions breach

For further information, please contact a member of the team. The following additional guidance is also available on the FRA's website – Public Notice in relation to the Russian Sanctions regime, Financial Sanctions 101 and Financial Sanctions Guidance.

New enforcement guidelines for CRS and Economic Substance

On 31 March 2022, the Cayman Islands Ministry of Financial Services advised industry that that Enforcement Guidelines in respect of the Common Reporting Standard (CRS) and Economic Substance (ES) frameworks have been issued by the Cayman Islands Tax Information Authority (TIA).

The [CRS Enforcement Guidelines](#) and the [ES Enforcement Guidelines](#) set out the TIA's principles and processes for taking enforcement action under their respective frameworks, and apply to all persons within the scope of the TIA's compliance monitoring and enforcement powers. Both guidelines should be read in conjunction with the [CRS Regulations](#) and the [ES Act](#), which are available on the [DITC website](#).

Of note, the guidelines set out the administrative penalties which may be imposed for various breaches of an entity's reporting obligations under the CRS Regulations and/or the ES Act.

In relation to CRS, the most substantial penalties would be incurred for failure to register on the DITC portal by the applicable notification deadline (US\$45,732) or for providing inaccurate or misleading information (US\$30,488) with smaller penalties of US\$12,195 for failure to file prescribed information. It should be noted that the amount of penalty is determined per offence and therefore multiple penalties may be incurred.

In relation to ES reporting, the most substantial penalty of US\$121,950 would be imposed for entities that are in scope for ES under the ES Act and that fail to satisfy the ES test as set out in the ES Act. However, and most significantly, the ES guidance confirms that where the TIA becomes aware that an entity has misclassified itself under the ES Act and as a result has not made an ES report for the requisite period, the TIA will consider the entity to have missed the reporting deadline, and will have 30 days to file an ES return. If the entity then fails to submit an ES return within the extended deadline, the entity will be deemed to have failed the ES test and will be given the maximum penalty of US\$121,950. Similarly, if an entity fails to respond to a request by the TIA for clarification or additional information, the TIA will make a determination as to whether the entity is required to satisfy an ES test and whether it has satisfied such test on the basis of the information provided, again being subject to the maximum penalty if the TIA determines that it has failed to satisfy the ES test.

All Cayman financial institutions are advised to ensure that their CRS and ES filings are in order given the TIA's increased enforcement of automatic exchange of information (AEOI) obligations.

Ogier's affiliated fiduciary services company, Ogier Global has a team of AEOI experts who are able to provide information, advice and assistance with all AEOI obligations. For guidance or

assistance, please contact Jill Mojica or Jason Fitzgerald at Ogier Global, your usual Ogier attorney, or any of the contacts listed on this briefing.

CIMA releases notice relating to an updated Fund Annual Return form for private funds

On 16 February 2022, CIMA issued a [notice](#) advising that an updated version of the Fund Annual Return (FAR) form for all private funds (Private Funds) registered under the Private Funds Act (Revised) (PF Act) would be released. The updated version combines the existing Private Fund FAR form and the Related Fund Entity form (RFE form). [2] The updated FAR form should be utilised for all Private Funds with a financial year-end of 31 December 2021 and beyond. The earlier version of the FAR form and separate RFE form will resultantly only be required for financial year-end filings up to 30 November 2021.

The updated Private Fund FAR form will be accessible via CIMA's Regulatory Enhanced Electronic Forms Submission (REEFS) portal. An updated completion guide will also be posted to CIMA's website once the updated Private Fund FAR form has been released.

CIMA updates its policy for private fund audit exemptions

In light of feedback from industry stakeholders, CIMA issued a [notice](#) on 12 March 2022 clarifying that the [Regulatory Policy – Exemption from Audit Requirement for a Private Fund](#) has been updated such that Private Funds that have not yet received capital contributions are not subject to the requirement to file audited financial statements with CIMA and therefore there is no need to apply for an audit waiver in such situation. Instead, the Private Fund is required to simply submit a declaration to CIMA stating that the Private Fund has not yet received any capital contributions.

For advice concerning any of the above matters, please contact your usual Ogier attorney or any of the contacts listed in this briefing.

[1] Administrative fines are levied in Cayman Islands dollars. The figures quoted are in US dollars at an exchange rate of US\$1.00 = CI\$0.82, rounded up to the nearest US dollar.

[2] The introduction of this was discussed in our earlier briefing: [CIMA releases FAR form and Related Fund Entity form for Cayman Islands Private Funds](#)

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

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