

APPLEBY

REGULATORY ROUND-UP
CAYMAN ISLANDS



REGULATORY ROUND-UP: CAYMAN ISLANDS TO Q3 2021

PART A: THE CAYMAN ISLANDS MONETARY AUTHORITY (CIMA)

Private funds – Regulatory Reporting Deadlines Extended

Following publication by CIMA of the private fund annual return form (**FAR Form**) on 9 July 2021 and the related fund entity form (**RFE Form**) on 30 August 2021, CIMA published a notice on 10 September 2021 advising private funds that the filing due date for the FAR Form and RFE Form (together, the **Forms**) has been extended to 31 October 2021. Accordingly, all private funds registered with CIMA with a 2020 financial year end or a 2021 financial year end up to 31 March 2021 are required to submit the Forms by 31 October 2021.

CIMA stated that no further extensions to the filing deadline will be granted for private funds with the above financial year ends. 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.

Registered private funds are required to submit both the FAR form, and, where applicable, the RFE form in order to satisfy reporting requirements under the *Private Funds (Annual Returns) Regulations, 2021*. Both Forms are available for completion on CIMA’s online regulatory enhanced electronic forms submission portal.

Fund Liquidations – 2021 Deadline Approaching

As the end of 2021 approaches, Cayman Islands private funds and mutual funds planning to undergo a voluntary liquidation should commence the liquidation process if they wish to avoid incurring liability for annual government and registration fees due in January 2022. Set out below are the relevant deadlines to be met by funds wishing to liquidate prior to the end of 2021.

Action	Deadline
Filings with CIMA	
CIMA registered funds should submit the relevant documentation to CIMA in order to have the status of those funds changed from “active” to “license under liquidation” or “licence under termination” (attracting half-yearly fees).	31 December 2021
AEOI and Economic Substance Filings	
All requirements for voluntary liquidation must be complied with and final meetings held. FATCA or CRS Reporting Financial Institutions, as well as in-scope relevant entities under the Cayman Islands economic substance regime will be required to further report to the Cayman Islands Tax Information Authority if the in-scope entities are still in existence for any part of 2022.	31 December 2021

Filings with the Registrar of Companies, Registrar of Limited Liability Companies and Exempted Limited Partnership Fees

All relevant filings to be made with the appropriate Registrar (e.g. liquidator's appointment notice, notice of winding up, liquidator's consent to act, directors' declaration of solvency) and final meetings held for companies. Only those exempted limited partnerships not subject to automatic termination as specified in their limited partnership agreements would have the flexibility to choose the timing of their liquidation.

Prior to 31 January
2022

AML Officers

On 7 June 2021, CIMA published a notice (available [here](#)), reminding all persons carrying on a relevant financial business to ensure that their appointed anti-money laundering compliance officers, MLRO and Deputy MLRO (collectively, **AML Officers**) are aware of their respective duties and responsibilities contained in the Anti-Money Laundering Regulations.

The CIMA notice reminds AML Officers that they must:

- be suitably qualified and experienced;
- be at management level and report directly to the board of directors or equivalent;
- be natural persons;
- be autonomous (meaning the AML Officer is the final decision maker as to whether to file a suspicious activity report); and
- have access to relevant materials in order to make an assessment as to whether an activity is suspicious.

CIMA Supervisory Circular - Licence Applications

On 28 June 2021, CIMA published a supervisory circular providing supplementary guidance to entities seeking to apply for a licence to operate in or from within the Cayman Islands under any existing regulatory act.

Licence requirements

An entity applying to become authorised by CIMA must fulfil a number of requirements, including providing key information to CIMA of its business plan, financial resources, internal systems, controls and risk management.

CIMA also places considerable emphasis on ensuring the applicant's "mind and management" will be based in the Cayman Islands. Essentially, this means that CIMA will need to be satisfied that the applicant will be properly run in the Cayman Islands and CIMA will be able to supervise it effectively.

Appleby Cayman has significant experience in successfully guiding applicants through the CIMA licensing process and in helping them to comply with their legal and regulatory obligations once established. If you are considering setting up a CIMA regulated entity in the Cayman Islands, we can help.

CIMA Supervisory Circular – Changes to Business Plan

On 16 September 2021, CIMA published a supervisory circular to remind licensees to only carry on business/activities in accordance with the information given in its approved licence application and business plan and to seek the prior written approval of CIMA for any change to the approved business plan or to the information supplied in a licence application to CIMA.

Please do reach out to us if you are looking to change your business plan.

CIMA Publishes Sector-Specific AML Guidance for Securitisation Vehicles

In May 2021, CIMA published a revised version of the CIMA guidance notes on the prevention and detection of money laundering, terrorist financing and proliferation financing guidance notes. The purpose of the revisions was to issue sector-specific guidance in relation to special purpose vehicles (**SPVs**), securitisation and structured finance arrangements (**AML Securitisation Guidance**, available [here](#)).

In this section, we examine some of the key features of the AML Securitisation Guidance and their applicability to Cayman Islands based SPVs, securitisation and structured finance arrangements.

Definition of Securitisation

The revised guidance contains a specific definition of securitisation:

Securitisation is a process that involves creating new financial instruments by pooling and combining existing financial assets, typically through an off-balance sheet bankruptcy remote special purpose vehicle ("SPV"), which purchases the assets using proceeds of securities issued to investors, usually in the form of debt. Payments of interest and principal on these securities is backed by the cash flow generated from the asset pool. Securitisation transactions include the issuance of collateralized debt obligations, collateralized loan obligations and asset backed securities, as well as all other similar transactions. The term investor refers to any person or entity purchasing a security issued by the SPV, including a bondholder, noteholder, preference shareholder and unitholder.

Securitisation vehicles (other than insurance securitisation vehicles) are generally not required to be CIMA licensed. Although such SPVs are not CIMA licensed, they are subject to CIMA's anti-money laundering regime.

In-Scope SPVs and Related Service Providers

The sector specific guidance applies to:

- (a) a non-insurance Cayman based SPV; and
- (b) an SPV service provider (e.g., trustees, placement agents, investment managers, sponsors) carrying on a relevant financial business¹.

SPV's AML obligations

Obligations to which SPV's are subject include:

- carrying out a risk assessment of their overall structure;

¹ The term relevant financial business means any of twenty-two relevant financial business activities contained in schedule 6 of the Proceeds of Crime Act (as revised) (i.e., the principal AML legislation).

- carrying out customer due diligence (**CDD**) on their customers, applying simplified or enhanced CDD to certain types of customers, and monitoring customers on an ongoing basis;
- identifying beneficial owners;
- adopting and maintaining AML-CFT policies and procedures;
- reporting suspicious transactions;
- training staff;
- keeping records; and
- carrying out financial sanctions screening.

CIMA's Administrative Fines Regime

CIMA imposed its first fine under its administrative fines regime on 10 November 2020. This section examines the evolution of CIMA's administrative fines regime to date.

Introduction

The legislative framework governing CIMA's administrative fines regime is found in Part VIA (Administrative Fines) of the Monetary Authority Act (as revised) (**Monetary Authority Act**). CIMA has also published an Enforcement Manual (available [here](#)) setting out, amongst others, CIMA's various enforcement powers, including the power to impose administrative fines. Unlike certain other foreign based financial regulators (e.g., the UK Financial Conduct Authority), CIMA has not yet published guidance setting out CIMA approach to enforcement, including the process and examination phase of its administrative fines regime.

Section 42A(1) of the Monetary Authority Act states:

The Authority has the power to impose an administrative fine on a person who breaches a provision prescribed in this Law, a regulatory law or the anti-money laundering regulations.

The reference to "person" contained in section 42A(1) appears to indicate that CIMA can impose an administrative fine upon a body corporate as well as an individual.

CIMA's administrative fines regime

CIMA has the power to impose administrative fines for certain breaches of legislation and regulations contained in schedule 1 of the Monetary Authority (Administrative Fines) Regulations 2019 (as revised) (**CIMA Regulations**).

Schedule 1 of the CIMA Regulations lists the prescribed provisions and breach categories in respect of which administrative fines can be levied, including three categories of breaches named as minor, serious or very serious.

In certain instances, depending on the particular offence, CIMA has the power to commence an enforcement action against an unlicensed entity for suspected breaches of Cayman Islands anti-money laundering legislation. There is no requirement for firms not otherwise licensed and regulated by CIMA to register with CIMA for anti-money laundering purposes and CIMA does not maintain a public register of such unlicensed entities.

Sanctions

Since 2020, CIMA has imposed four administrative fines on CIMA licensed entities totaling almost CI\$5 million. To date, all administrative fines have been imposed in respect of breaches of the Anti-Money Laundering Regulations 2017, although CIMA has the power to impose administrative fines on body corporates and

individuals under various other regulatory laws (e.g., entities otherwise regulated or licensed under the Securities Investment Business Act, the Private Funds Act or the Mutual Funds Act, etc).

In May 2021, CIMA imposed its largest monetary fine to date against a single provider in the amount of CI\$4,232,607.50.

Financial Sanctions: The Enforcement Regimes Potentially Applying to Your Entity

In this section, we consider the potential penalties which may be imposed on in-scope Cayman Islands based entities for non-compliance with financial sanctions regimes outlining that they can have extra-territorial reach.

What are Financial Sanctions?

Financial sanctions are legally binding measures that can be taken against individuals, entities or countries, being the subject. Typically, once a person has been placed on a financial sanctions list, there is a legal obligation not to transfer funds or to make funds or economic resources available, directly or indirectly, to that subject.

The Cayman Islands has its own financial sanctions regime pursuant to the Terrorism Act (as revised), the Proliferation Financing (Prohibition) Act (as revised) and the related guidance published by the Cayman Islands Financial Reporting Authority (FRA) (February 2020) (**FRA Guidance**) (together, the **Cayman Islands Financial Sanctions Regime**).

In addition to the Cayman Islands Financial Sanctions Regime, the UK government has also extended financial sanctions measures to the Cayman Islands by way of Overseas Territories Orders in Council implementing United Nations and European Union financial sanctions measures.

Enforcement in the Cayman Islands

CIMA maintains a list of all applicable financial sanctions in the Cayman Islands (although CIMA does not guarantee that list is accurate, complete and up to date). Firms that are CIMA licensed are required to monitor these sanctions lists and to keep themselves updated with all official sanction orders published in the Cayman Islands Gazette.

Such CIMA licensed entities are also expected, pursuant to the Anti-Money Laundering Regulations, to have systems and controls in place to conduct initial due diligence, and review on an ongoing basis its own activities and possible changes to the Cayman Islands Financial Sanctions Regime.

In the event of updates to the relevant sanctions lists, financial service providers (**FSPs**) may discover that certain sanctions are applicable to one or more of their clients. Pursuant to the Terrorism Act and the Proliferation Financing (Prohibition) Act, FSPs have certain reporting obligations to the FRA, as well as certain asset freezing obligations, if they discover a relationship that contravenes an order or a direction under the Cayman Islands Financial Sanctions Regime.

An FSP could also find itself subject to enforcement action by CIMA for weaknesses in its policies and procedures around financial sanctions screening. While CIMA has imposed administrative fines for failures in anti-money laundering procedures, CIMA has not to date imposed an administrative fine on any entity specifically related to failures concerning an entity's financial sanctions obligations, including, amongst others, its financial sanctions screening process.

U.S. Financial Sanctions

In the U.S, the Office of Foreign Assets Control (**OFAC**) administers economic sanctions programmes against countries and groups of individuals (**U.S. Sanctions**). OFAC can impose civil monetary penalties on individuals and entities that breach U.S. Sanctions. The potential size of the penalty depends on the sanctioning regime which has been breached. Unlike OFAC's regime, there is no requirement to show that a person knew they were breaching U.S. Sanctions in order for them to be subject to an OFAC enforcement penalty – it is a strict liability standard. Cayman based entities operating in the United States or conducting business using U.S. dollars should take care that they do not inadvertently fall foul of U.S. Sanctions.

PART B: THE DEPARTMENT FOR INTERNATIONAL TAX COOPERATION (DITC)

Economic Substance

On 1 July 2021, the economic substance regime of the Cayman Islands was expanded, bringing general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships in-scope of the ES Regime (collectively, excluding local partnerships, **In-scope Partnerships**).

An In-scope Partnership must now submit an economic substance notification (**ESN**) and an economic substance return (**ESR**) on an annual basis to the DITC (being the Cayman Islands supervisory authority for the economic substance regime) to enable the DITC to determine if that partnership has satisfied the economic substance test.

Key Dates for In-scope Partnerships

Category	Compliance Date
In-scope Partnership carrying on a relevant activity and in existence prior to 30 June 2021.	Must satisfy the economic substance test from 1 January 2022.
In-scope Partnership carrying on a relevant activity and in existence on or after 30 June 2021.	Must satisfy the economic substance test from the date on which that partnership commences carrying on a relevant activity.

The smart form and bulk upload versions of the ESN will be updated in due course to accommodate partnerships. The updated versions are expected to be released in the DITC's corporate administration platform (**CAP**) in mid-October 2021. The bulk upload CSV file will be available on the DITC website before the updated versions are released on CAP.

YOU MAY ALSO BE INTERESTED IN...

This Round-Up is not intended to be used as a substitute for a detailed analysis of an entity's status or obligations under Cayman's regulatory laws and does not constitute professional advice. We recommend seeking professional advice if an entity is unsure of its status or its obligations.

Appleby Cayman is a full service law firm and regularly publishes briefings on various topics. You may be interested in the following:

September 2021: "**Loans & Secured Financing in the Cayman Islands 2021**" ([here](#))

September 2021: "**Cayman Private Fund Annual Return and Related Fund Entity Deadlines Extended (final extension)**" ([here](#))

August 2021: "**The Filing Deadline for Private Funds Annual Return is Coming Soon – Are You Ready?**" ([here](#))

July 2021: "**Recent Updates Of The Cayman Islands Economic Substance Regime Bringing Partnerships Into Scope**" ([here](#))

June 2021: "**Appleby contributes to Cayman Chapter to Chambers Blockchain 2021**" ([here](#))

May 2021: "**The 2021 Cayman Islands Real Estate Guide**" ([here](#))

May 2021: "**Cayman Islands: Mergers & Acquisitions Comparative Guide**" ([here](#))

April 2021: "**Six Months On: Temporary Relocation And Residency By Investment Continues to Increase in Popularity**" ([here](#))

CAYMAN REGULATORY TEAM

Please do not hesitate to contact us should you wish to receive additional information.



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Peter is Partner in the Corporate Group and Joint Head of Appleby's Global Technology and Innovation Group which he helped to establish. Peter is based in the Cayman Islands but frequently works alongside other offices within the Appleby network on technology transactions.

His practice is focused on privacy, data protection and strategic corporate-commercial and regulatory work in the technology and innovation sectors. Peter has a keen interest in emerging technologies and has worked on numerous blockchain-based virtual asset offerings and smart contract projects across multiple jurisdictions.

Peter is a founder and director of the Blockchain Association of the Cayman Islands. He is also a member of the Financial Services Legislative Committee Fintech Sub-Committee, the Cayman Finance Fintech Innovation Lab and the Fintech Professionals Association.

A privacy and data protection specialist, Peter is a member of the International Association of Privacy Professionals and sits on the Cayman Islands Government's Working Group on Data Protection.



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Simon Raftopoulos is a partner and a member of the Corporate Finance and Private Equity teams. He represents clients in a wide variety of corporate finance transactions, including private equity and fund finance, joint ventures, mergers, acquisitions, leveraged buyouts, initial and secondary public offerings and private placements of equity and debt securities. Simon also represents clients on large private equity transactions and his team has a deep PE formation and transactional presence in Cayman.

For 2020, Simon has been recognised by Who's Who Legal as one of the world's leading banking lawyers and ranked as a 'market leader' in IFLR1000. Chambers Global described him as a "brilliant lawyer, with excellent and creative ideas for complex issues". For 2019 he is ranked as a 'leading individual' and in 2018, he was a 'recommended' lawyer in Legal 500 and described as "very technically sound, a problem-solver and extremely knowledgeable on Cayman law" in Chambers Global.



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Miriam Smyth is a Senior Associate in the corporate department in Appleby's Cayman Islands office.

Miriam practices in the area of financial service regulation, advising banks, insurers, investment firms, alternative lenders and fintech firms on a wide range of regulatory issues including, license applications for authorisation, advising on establishing newly regulated businesses, regulatory change of control notifications, advising on the AML-CFT compliance framework and keeping clients updated on key regulatory changes impacting their businesses.

She has significant experience engaging with financial regulators and responding to regulator requests for information and has worked on several risk mitigation programmes and regulatory remediation programmes.



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Kari Larkin is a Paralegal in Appleby's Cayman Islands office and a member of the corporate department. Kari assists with a broad range of corporate and finance work, but works more closely with the regulatory and fintech teams. Kari's expertise lies in company formation and related corporate transactions, assisting and advising on general and legal operations of corporate entities.

ABOUT APPLEBY

Appleby is one of the world's leading international law firms. Our global teams of legal specialists advise public and private companies, financial institutions and private individuals. We are a full service law firm providing comprehensive, expert advice and services across corporate, dispute resolution, property, regulatory, and private client and trusts practice areas. We work with our clients to achieve practical solutions, whether from a single location or across multiple jurisdictions. We operate in 10 highly regarded and well-regulated global locations. These include the key international jurisdictions of the Cayman Islands, Bermuda, the British Virgin Islands, Guernsey, Isle of Man, Jersey, Mauritius, and the Seychelles, as well as the international financial centres of Hong Kong and Shanghai. Our global presence enables us to provide comprehensive, multi-jurisdictional legal advice at the times most beneficial to our clients. We are regularly recognised for our professionalism, integrity and excellent client service, and these are the values we pride ourselves on and are at the core of our business.

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This publication is for general guidance only and does not constitute definitive advice.

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