

APPLEBY

Q4 2020

**CAYMAN ISLANDS
REGULATORY UPDATE**



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INTRODUCTION

2020 draws to a close, ending an unprecedented year shaped by a pandemic. It's also been an active year on the Cayman regulatory front. Appleby Cayman's final update for the year takes a closer look at significant developments over the past quarter and wraps with a Top 10 list of Key Regulatory Developments for 2020.

HOT TOPICS

DEPARTMENT FOR INTERNATIONAL TAX COOPERATION OPENS NEW ELECTRONIC PORTAL

Automatic Exchange of Information (AEOI)

On 12 November 2020 the Department for International Tax Cooperation (**DITC**) announced the opening of its new electronic portal (**DITC Portal**) for FATCA and CRS registration and reporting. The DITC Portal is intended to service all legislative frameworks (economic substance, FATCA, CRS, country-by-country reporting) and is expected to facilitate the sharing of information with other countries' tax authorities, but functionality was to be launched in stages.

In light of the delayed launch of the portal, the DITC further extended AEOI reporting deadlines:

| | |
|--|---|
| New Entity Registration | 16 December 2020 |
| CRS Reporting & CRS Filing Declaration | 16 December 2020 |
| FATCA Reporting | 16 December 2020 |
| CRS Compliance Form | ***UPDATED 22/01/2021: 15 September 2021 |

Only CRS reporting functionality will be disabled between 17 December 2020 and March 2021. Users will still be able to register new Financial Institutions on the DITC Portal, complete AP/PPoC/Secondary User updates, submit the CRS Compliance Form and submit FATCA reporting.

Questions relating to CRS & FATCA may be emailed to CaymanAEOIPortal@gov.ky

ACT NOW!

Or should we say "Acts now"? A "Law" is now an "Act" in the Cayman Islands.

Recent amendments to the Cayman Islands constitution have ushered in this and other key changes, including:

- The name of the Cayman Islands Legislative Assembly has been changed to Parliament
- The autonomous capacity of the Cayman Islands Cabinet with respect to domestic affairs is confirmed, along with changes to the circumstances in which the Governor must consult the Cabinet
- There are now provisions for Parliamentary Secretaries and a Police Service Commission

All enactments commencing after December 3, 2020 will be entitled "Acts" from birth. All enactments that commenced prior to December 3, 2020 are amended by substituting the word "Act" for "Law" in the short title. All internal cross references within former "Laws" are similarly amended.

Economic Substance (ES)

On 26 November 2020 the DITC advised that the Portal was open for registration of outsource service providers (**OSPs**). OSPs should register in order for the Cayman Islands Tax Information Authority (**TIA**) to consider the OSP's services, provided to any relevant entity, in the assessment of whether that entity has satisfied the economic substance test (**ES Test**) under the International Tax Co-operation (Economic Substance) Act (**ES Act**).

On 26 November, the DITC also confirmed entities were able to submit economic substance notifications (**ESNs**) for the financial year commencing in 2020. The ESN is required as a prerequisite to filing a company Annual Return. The ESN will be due annually and is based on the financial year of the entity, not the calendar year.

The submission window for the financial year commencing in 2021 was also made available on the DITC Portal on 26 November 2020 to facilitate entities wanting to file their ESN in advance of dissolving / winding up during the 2021 financial year.

In addition to the ESN, a relevant entity carrying on a relevant activity that is required to satisfy the ES Test is required to prepare and submit to the TIA annually an economic substance return (**ES Return**). The ES Return must be made within 12 months after the end of each financial year of the relevant entity commencing on or after 1 January 2019.

On 12 November 2020 the DITC had released copies of sample ES Return forms as well as an Updated Form for Entity Tax Resident in Another Jurisdiction. Updated versions of the forms were released on 23 December 2020. Click [here](#) to access the latest versions of these forms.

*****UPDATE:** On 11 January 2021, the DITC announced that reporting deadlines for ES have been further extended as outlined below. The revised reporting deadlines, which apply only for this first year, are as follows:

| Period End Date (for purposes of the ES Return) | ES Obligation | Deadline |
|--|--|-------------------------------------|
| 31 December 2019 - 30 April 2020 | ES return (all except IP Business) | 30 April 2021 |
| 1 May 2020 - onwards | ES returns | 12 months after the period end date |
| 31 December 2019 - 29 February 2020 | ES Return with Type Income: Relevant Activity - IP Business and Form for Entity Tax Resident in Another Jurisdiction | 28 February 2021 |
| 1 March 2020 - onwards | ES Return with Type Income: Relevant Activity - IP Business and TRO | 12 months after the period end date |

Where a relevant entity is required to file an ES Return, the failure to do so by the relevant time will attract a penalty of CI\$5,000 (US\$6,098) and an additional penalty of CI\$500 (US\$609.75) for each additional day during which the failure to comply continues.

Questions relating to ES may be emailed to CaymanESPortal@gov.ky

Should you have any questions or concerns regarding any of the regulatory requirements discussed herein, please contact a member of the Appleby Cayman Regulatory Group or your usual Appleby contact.

VIRTUAL ASSET (SERVICES PROVIDERS) ACT 2020

In May 2020, a new legislative framework for regulating virtual asset businesses, the Virtual Asset (Service Providers) Act 2020 (**VASP Act**) was introduced in the Cayman Islands. Phase 1 of the VASP Act came into force on 31 October 2020. Phase 2 is expected to be introduced during spring 2021.

The VASP Act derives from recommendations made by the Financial Action Task Force (**FATF**) and provides for the regulation of virtual asset businesses and for the registration and licensing of persons who are providing "*virtual asset services*".

The VASP Act defines virtual assets as "a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes but does not include a digital representation of fiat currencies". Although formal guidance is awaited, this wide definition is intended to capture all cryptocurrencies, security tokens, utility tokens or other digital assets that are tradeable or transferable, with the exception of digital fiat currencies. "Digital representation of fiat currencies" is not defined but is intended to apply only to government-issued virtual currencies as opposed to Tether or similar fiat currency backed tokens.

Who is in scope?

The VASP Act applies to any person providing "*virtual asset services*". Virtual asset services are defined as the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement:

- (a) exchange between virtual assets and fiat currencies;
- (b) exchange between one or more other forms of convertible virtual assets;
- (c) transfer of virtual assets;

- (d) virtual asset custody service; or
- (e) participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset.

The VASP Act will only affect persons that carry out virtual asset services as a business or in the course of a business for or on behalf of other persons.

Registration Process

As noted above, the regulatory framework for the VASP Act is being implemented in two phases. Phase 1 will focus on anti-money laundering and countering the financing of terrorism compliance, supervision and enforcement, and other key areas of risk. Under Phase 1, entities engaged in or wishing to engage in virtual asset services must be registered with CIMA under the VASP Act.

Registration with CIMA must be done via the VASP Application Form on CIMA's online platform. The application must be filed by **1 February 2021**.

The VASP registration form requests, amongst other things, details of the entity's virtual asset services, the entity's AML compliance officer, the appointed money laundering reporting officer and deputy officer, the entity's actual revenue for the prior 12 months (or, if unavailable the projected revenue for the 12 months following the application), the entity's AML/CFT procedures and the entity's internal safeguards and data protection systems.

All applications for registration must be accompanied by a US\$1,200 assessment fee. This fee can be paid via the portal at the time of application submission.

Once an application is filed, CIMA will then assess the application and revert where information may be incomplete or unclear. If an application for registration is successful, the applicant will be required to pay an application fee. The actual fee amount will depend on various prescribed factors. An annual renewal fee equal to the relevant application fee charged will also be payable.

Entities engaging in virtual asset services on and after 1 February 2021, which have not completed the registration process, may be subject to penalties and other enforcement measures.

VASP Act Phase 2

Phase 2 is expected to be introduced in spring 2021. Phase 2 will involve the development of a framework for entities providing virtual asset services which will include rules, procedures and guidance tailored to each entity type. At

APPLEBY TECHNOLOGY AND INNOVATION OFFSHORE GUIDE 2021

As the pace of technological change accelerates, so too does the legal and regulatory landscape. Appleby's 2021 Offshore Technology and Innovation Guide provides a detailed overview of the current legal and regulatory position across a number of different technology sectors in eight of the world's largest offshore jurisdictions. With quick-linked answers to some of the most business critical issues, the guide also offers a "Tech Snapshot" to help you identify the most suitable offshore jurisdiction for your technology project. The full chapters then expand upon those responses to provide a single, comprehensive resource. Appleby's market leading Technology and Innovation Group routinely advises clients on pan-jurisdiction technology projects and also works frequently with local government, regulators and industry bodies to develop responses to the challenges of globalisation and increased regulation.

To access a copy of the 2021 Guide, please click [here](#).

this stage, no further details have been released by CIMA. We anticipate that Phase 2 will be shaped in large part by the types of entity registering under Phase 2.

To discuss the application of the VASP Act in relation to your project please contact the Appleby Technology and Innovation Group [here](#).

CAYMAN ISLANDS MONETARY AUTHORITY

CIMA RULES AND STATEMENTS OF GUIDANCE

Non-Fund Arrangements

In November 2020 CIMA released its anticipated guidance on non-fund arrangements. This guidance is meant to assist with determining whether certain arrangements, as outlined in the Schedule to the Private Funds Act (2020 Revision)(**PF Act**), are non-fund arrangements. Meeting the definition of a non-fund arrangement exempts that arrangement from the requirement to register with CIMA under the PF Act.

Non-fund arrangements include, among other things, pension funds, securitisation special purchase vehicles, joint ventures, holding vehicles, debt issues and debt issuing vehicles, structured finance vehicles, preferred equity financing vehicles, sovereign wealth funds and single family offices. Care should be taken to appropriately assess whether any particular entity fits within one of the available exemptions and readers are cautioned to seek Cayman legal advice when considering the guidance.

Cybersecurity

Readers are reminded that CIMA also introduced a new Rule and Statement of Guidance on Cybersecurity in late May 2020. The Rule applies to CIMA-regulated entities and came into effect in late November 2020. Further details on these requirements may be found in our Q2 Regulatory Update (available [here](#)).

CIMA NOTICES

9 October 2020

CIMA releases form AML/CFT Inherent Risks – Virtual Asset Service Provider – AIR 157-84 (available on REEFS and [here](#)). VASPs must complete and file on or before 31 January 2021.

CIMA releases form FXT-162-22 (available on REEFS and [here](#)). Effective 1 November 2020 mutual funds requesting an extension for the filing of their audited financial statements and Fund Annual Return must use this form to do so.

19 October 2020

CIMA releases form APP-101-78 (available on REEFS and [here](#)). Effective 1 November 2020 applications to register Limited Investor Funds will only be accepted/processed using this form.

CIMA releases form TMF-147-22 (available on REEFS and [here](#)). Effective 1 November 2020, applications to de-register regulated mutual funds are to be submitted using the form. All documents required to complete the de-registration process must also be filed on the CIMA's REEFS Portal.

26 November 2020

CIMA advises that the first audited accounts required to be filed by a Limited Investor Fund would be for the fund's first financial year-end post registration with CIMA.

7 December 2020

CIMA releases form Annual Declaration for Registered Persons – ADR 046 75 (available on REEFS and [here](#)). Completion of this form by 15 January in each year is mandatory for all Registered Persons along with the payment of the annual fee. The next Annual Declaration should cover the period 1 January 2020 (or the date of registration) to 31 December 2020. Failure to complete and file this form with CIMA by the prescribed deadline will result in enforcement action by CIMA.

TOP 10 REGULATORY DEVELOPMENTS FOR 2020

1. **Private Funds Act 2020**

On 7 February 2020 the Cayman Islands enacted the Private Funds Act 2020 bringing closed-ended investment funds within the scope of regulation by the Cayman Islands Monetary Authority's (**CIMA**) for the first time. A transitional period allowed pre-existing "private funds" until 7 August 2020 to complete the registration process. In July 2020 the definition of "private fund" was amended adding to the registration pressures in the home stretch. By the end of the transitional window though, over 12,000 private funds had registered with CIMA.

2. **Limited Investor Funds**

Also on 7 February 2020 the Mutual Funds Act was amended to replace the category of funds previously 'exempt' from registration with a new regulated category called "limited investor funds" that are required to register with CIMA. Formerly exempt funds had until 7 August 2020 to complete their registration, with newly formed limited investor funds required to register prior to launch.

3. **Beneficial ownership threshold change**

Effective 15 May 2020, a beneficial owner under the Companies Act (2020 Revision) and the Limited Liability Companies Act (2020 Revision) is one who holds '25% or more' of the shares or voting rights in a company or LLC, as applicable. Prior to amendment of the law, a beneficial owner was one holding '*more than 25%*'.

4. **Virtual Asset Services Providers Act 2020**

In May 2020, a new legislative framework for regulating virtual asset businesses, the Virtual Asset (Service Providers) Act 2020 (**VASP Act**) was introduced in the Cayman Islands. Phase 1 of the VASP Act came into force on 31 October 2020. Phase 2 is expected to be introduced during spring 2021. Under Phase 1, entities engaged in or wishing to engage in virtual asset services must file a registration application with CIMA by 1 February 2021.

5. **COVID-19's impact on regulatory deadlines**

In a year indelibly shaped by the pandemic, Cayman regulatory compliance was no different. The deadline for filing a company's annual return and the 2019 economic substance notification shifted to 30 June 2020. CIMA also extended its deadlines for quarterly regulatory filings by licensees. The Department for International Tax Cooperation (**DITC**) extended its deadline for FATCA and CRS reporting to 16 December 2020, following COVID related delays in the launch of its new portal (discussed below). Similarly, the DITC extended the deadlines for economic substance reporting to 31 January 2021 for high risk intellectual property business and 28 February 2021 for all other business sectors that are required to file a return.

6. Economic Substance Guidance Notes 3.0 and Returns

On 13 July 2020 the Cayman Islands government released its long-awaited Economic Substance Guidance Notes version 3.0 (**New GNs**). The New GNs include sector-specific guidance for all relevant activities, unlike version 2.0. In anticipation of initial reporting under the International Tax Co-operation (Economic Substance) Act, in November 2020 the DITC released copies of sample ES Return forms as well as an Updated Form for Entity Tax Resident in Another Jurisdiction. Updated versions of these forms were then released on 23 December 2020.

7. New AML Guidance Regulations and Guidance Notes

During the Summer of 2020 amendments to Cayman's Anti-Money Laundering Regulations (**AML Regulations**) and related Guidance Notes disposed of the AML Steering Committee's equivalent jurisdictions list, which had been used to assess whether simplified due diligence can be applied to a given client. A regulated entity must now make an independent decision as to whether the country or geographic area of the relevant customer has a low risk of money laundering, terrorist financing and proliferation financing, with reference to credible sources listed in the AML Regulations. The amendments also changed the requirements for Eligible Introducer letters and enhanced provisions requiring consideration of targeted financial sanctions.

8. New DITC Portal

In November 2020 the DITC launched its new electronic portal (**DITC Portal**). The DITC Portal is intended to service all legislative frameworks (economic substance, FATCA, CRS, country-by-country reporting) and is expected to facilitate the sharing of information with other countries' tax authorities. Functionality is being launched in stages, with FATCA and CRS registration and reporting beginning on 12 November 2020 and economic substance reporting and notification on 26 November 2020.

9. CRS Compliance Form

Although the CRS Compliance Form was introduced April 2020, most are grappling with its completion in Q4, given the first filing for the 2019 financial year is now due by 31 March 2021. The form is intended to provide the DITC with additional information annually to ensure the effective implementation of, and compliance with, the reporting and due diligence procedures in accordance with the CRS. Going forward, the form will be due on 15 September of each year and the DITC will apply automatic penalties where this deadline is not met.

10. CIMA rules, rules and more rules!

CIMA had a prolific year with numerous rules and statements of guidance being released. Rules on each of: the contents of offering documents, the segregation of assets and the calculation of asset values, for both regulated mutual funds and private funds were published. New guidance for insurance brokers, agents and agencies was introduced in August. In late November a new rule and statement of guidance relating to cybersecurity of licensees also came into force, following their introduction in May and the end of a transition period for implementation. The introduction of a more defined administrative fines regime in Q3 is also expected to support enhanced enforcement action by CIMA in future.

For more information on these developments and their potential impact on your Cayman entity, please contact a member of the Appleby Cayman Regulatory Group or your usual Appleby contact.

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Jennifer is Counsel in the Corporate Group at Appleby. She specialises in providing regulatory advice to clients within the banking, investment fund and fund administration, insurance and securities sectors.

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Peter Colegate is Counsel in the Corporate Group and co-head of Appleby's Global Technology and Innovation Group. 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 token offerings and smart contract projects across multiple jurisdictions. 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. Peter has written and spoken extensively about privacy, data protection and new technologies across Asia and the Caribbean region, recognising that regulatory issues are often the threshold question for new business models, products and services. He is a member of the Financial Services Legislative Committee Fintech Sub-Committee, the Cayman Finance Fintech Innovation Lab, the Cayman Islands Blockchain Association and the Fintech Professionals Association.

In 2020, Legal 500 ranked Peter as a 'Rising Star' noting him as a "subject matter expert, responsive and detail-oriented" for Regulatory and Compliance.



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Appolina is an Associate in the Corporate practice group. Her practice areas include funds, structured finance (predominantly involving CLOs), mergers and acquisitions, public and private offerings of debt and general corporate matters. Appolina has also provided regulatory advice to clients within the banking, insurance and energy sectors.

Appolina is an Appleby legal scholarship recipient and joined the firm in late 2016 under its Articled Clerk programme, following completion of her legal studies in England. From January 2020 to May 2020 Appolina worked at Wallace Robinson & Morgan, a Birmingham based firm where she provided property advice to one of the United Kingdom's largest developers on a number of large property developments.



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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.

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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