

TOP 10 CAYMAN 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.