

## Cayman Islands Funds and Regulatory Update: Q2 2022

Newsletters - 27/07/2022

For your convenience, we are pleased to provide a round-up of various Cayman legal and regulatory developments that have occurred over the second quarter of 2022, plus upcoming deadlines. We draw your attention, in particular, to the imminent FATCA/CRS filing deadline referred to in the first item below.

### Summary of recent legal and regulatory developments

#### [FATCA and CRS reporting deadline - 31 July 2022](#)

Cayman financial institutions are reminded of the imminent upcoming FATCA and CRS reporting deadline of **31 July 2022** and are advised that the Cayman Islands Department of Tax Co-operation (DITC) has issued several CRS breach notices which may result in the imposition of administrative penalties for certain past reporting failures. For details of how Ogier Global may help with your FATCA and CRS reporting compliance please see their briefing [here](#).

#### **FATCA and CRS reporting deadline – 31 July 2022**

As previously advised in Ogier Global's briefing: [Are you prepared for the upcoming FATCA and CRS Reporting deadline of July 31, 2022?](#), the next deadline for CRS and FATCA reporting with the Cayman Department for International Tax Cooperation (DITC) is fast approaching on **31 July 2022**, followed closely by the 15 September 2022 CRS Compliance Form deadline. Although it is advisable to submit all reports as early as possible prior to the statutory deadline, the DITC has confirmed that as this year's deadline

In a [Supervisory Circular](#) to all Cayman regulated funds dated 13 April 2022, the Cayman Islands

<p><a href="#"><u>CIMA issues statement on ESG considerations</u></a></p>	<p>April 2022, the Cayman Islands Monetary Authority (<b>CIMA</b>) acknowledged the importance of ESG investment strategies in the fund industry and provided broad guidance to funds implementing such strategies.</p>	<p>falls on a Sunday, it will accept FATCA and CRS submissions up to Monday 1 August 2022. If you require any assistance with your FATCA and CRS filings, please reach out to a member of Ogier Global's dedicated AEOI Compliance team or your usual Ogier attorney.</p>
<p><a href="#"><u>EU confirms no additional AML/CFT measures for Cayman</u></a></p>	<p>The Ministry of Finance has received confirmation from the EU that the EU does not require further measures, beyond those included in the Financial Action Task Force (<b>FATF</b>) action plan, for removing the Cayman Islands from the EU's AML/CFT list.</p>	<p>As discussed in our <a href="#"><u>Q1 quarterly update</u></a>, the Cayman Islands Tax Information Authority (<b>TIA</b>) issued in March new guidelines (<a href="#"><u>CRS Enforcement Guidelines</u></a> and <a href="#"><u>ES Enforcement Guidelines</u></a>) 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 (<b>ES</b>) frameworks. Since then, the DITC has issued several CRS breach notices which may result in the imposition of administrative penalties for certain reporting failures and has indicated that it expects to issue penalties for missed reporting for the ES notification year 2020 shortly. The DITC has confirmed that the key areas of focus for CRS enforcement will be:</p>
<p><a href="#"><u>Cayman court revisits winding up petitions against general partners</u></a></p>	<p>The recent Cayman decision of <i>Re Formation (Cayman) Fund I, L.P</i> confirms the legal position as it had been previously understood in the Cayman Islands that Cayman exempted limited partnerships can be wound-up by the Cayman court on the just and equitable basis in the same manner as a company, such that limited partners may apply to wind up the partnership directly.</p>	<p>of focus for CRS enforcement will be:</p>

- missing the relevant reporting deadline (i.e., for returns, declarations, and compliance forms);
- misclassification; and
- incorrect reporting (e.g., missing TINs or dates of birth on the CRS return)

The DITC has also noted that common errors in relation to ES reporting are:

- incorrect ES notification year listed on the ES notification; the year should be the calendar year in which the financial year commences;
- uploading consolidated financial statements or incomplete books of account; and

- classification errors (particularly regarding holding companies)

All Cayman financial institutions are advised to ensure that their CRS and ES filings are in order given the DITC's increased enforcement of AEOI (FATCA/CRS) obligations. As mentioned above, Ogier Global has a dedicated team of AEOI experts who are able to provide information, advice and assistance with all of your AEOI obligations.

## CIMA issues statement on ESG considerations

In a Supervisory Circular to all Cayman regulated funds dated 13 April 2022, the Cayman Islands Monetary Authority (CIMA) acknowledged that Environmental, Social and Governance (ESG) considerations, or sustainable investing, is the fastest growing investment strategy within the financial services sector. CIMA also acknowledged the need for funds pursuing such strategies, and their investors, to better understand the impact of the ESG-related risks arising as a result.

At a minimum, those charged with governance of regulated funds should have clear roles and responsibilities in managing and mitigating the risks from climate change and other ESG-related risks in line with the fund's set investment objectives and such funds should:

- start establishing reliable approaches for identifying, measuring, monitoring, and managing material ESG-related risks; and
- ensure clear and ongoing disclosures in the context of their reporting requirements.

CIMA states in the Circular that it will continue to undertake reviews of best practices undertaken in other key financial jurisdictions, with the aim of developing a suitable regulatory and supervisory approach for climate related risks and other ESG-related risks. In addition the Cayman Government has previously announced that it is working on a legislative framework for the implementation of ESG criteria for Cayman's financial services industry – see our briefing An ESG framework for Cayman Funds.

Ogier has a dedicated Sustainable Investing and Impact Funds practice, led by partner Kate Hodson. In addition, in 2020 Ogier's fiduciary arm, Ogier Global, launched its Sustainable Investing Consulting service to support clients, including asset managers, on integration, strategy, impact assessment, reporting and to navigate ESG policy and regulation. Find out more about Ogier's Sustainable Investing and Impact Funds practice and Ogier Sustainable Investing Consulting practice.

## EU confirms no additional AML/CFT measures for Cayman

The EU has provided confirmation in a letter dated 17 May 2022 to the Cayman Minister of

Financial Services and Commerce, the Hon. André Ebanks, from the European Commission's Directorate-General for Financial Services and Capital Markets Union (**DG FISMA**), that the EU does not require further measures, beyond those included in the FATF action plan, for removing the Cayman Islands from the EU's AML/CFT list. DG FISMA has invited the Cayman Islands to focus on implementing the FATF's action plan, and noted that it would monitor our progress via the FATF's International Cooperation Review Group, of which the EU is a member.

Of the three points that the FATF action plan comprised, Cayman has satisfied one point regarding CIMA's sanctions regime and Cayman will provide an update on its progress on the second and third points, in relation to beneficial ownership filings and AML prosecutions, during the FATF's October 2022 plenary.

As part of Cayman's strengthening of its beneficial ownership requirements in response to the FATF's recommendations, the beneficial ownership regulations have been amended in relation to individuals to stipulate that the required particulars to identify an individual are taken from the individual's unexpired and valid passport. This may result in requests from Cayman service providers being received for updated identification documents to be supplied and this information must be updated on an ongoing basis.

On 26 July 2022 the Ministry of Finance issued an industry advisory stating that the Competent Authority for Beneficial Ownership has published guidance notes on complying with beneficial ownership obligations in the Cayman Islands. Topics covered in the guidance include who is a beneficial owner; relevant change(s); and filing obligations of entities in liquidation and upon the death of a beneficial owner. In the notice the Ministry reminded industry of the recent amendments referred to above and that failure to provide adequate, accurate and up-to-date beneficial ownership information may result in an administrative fine being assessed against an entity. In relation to the FATF's third recommendation, there have been a number of administrative fines issued in relation to breaches of the AML Regulations.

Once the FATF removes the Cayman Islands from its list of jurisdictions under increased monitoring, the EU will initiate its steps to delist the Cayman Islands from its AML/CFT list.

## **Cayman court revisits winding up petitions against general partners**

In the recent decision of *Re Formation (Cayman) Fund I, L.P* (unreported, 21 April 2022), Justice Kawaley held (notwithstanding the earlier decision of Justice Parker in *Re Padma Fund L.P.* (unreported, 8 October 2021) in respect of a creditor's petition) that a limited partner may petition to wind up an exempted limited partnership (**ELP**) on the just and equitable ground by presenting a petition against the ELP directly (rather than against the general partner), and that an ELP may be wound-up in the same manner as a company pursuant to Part V of the Companies Act.

This decision will be welcomed by the funds industry as it restores the previously understood legal position and thereby preserves the historic dynamic among the general partner, the limited partners and the ELP. It also relieves some anxiety for sponsors using a single general partner for multiple ELPs. For further details of the decision see: [Cayman court revisits winding up petitions against general partners](#).

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

## About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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