



# Waystone Cayman – News and Regulatory Updates

Welcome to our Cayman Islands regulatory update which will provide you with a quarterly review of a wide range of Cayman Islands related regulatory compliance matters including, news, guidelines and significant updates.

We will also keep you updated on Waystone news and events from across the globe. If you have any questions about the updates below, get in touch with our [Cayman Solutions](#) team today.

This month's edition features:

## Important Updates to International Tax Compliance Deadlines

On March 31, 2022, The Cayman Tax Information Authority (TIA) released its CRS enforcement guidelines outlining the circumstances under which financial institutions could face penalties for failing to comply with the Common Reporting Standard (CRS). It also outlined the process by which financial institutions would be notified of penalties, and the notice and appeals process by which they may contest penalty imposition.

The potential primary penalty imposed on each financial may be up to KYD 50,000 (USD 60,000) plus continuing penalties of KYD 100 (USD 120) for each day that a violation continues, The CRS enforcement guideline state separate amounts for each offense. Please see below the more notable offenses and their respective penalties:

- Failure to establish and maintain written policies and procedures under the CRS carries a penalty of KYD 7,500
- Failure to implement and comply with written policies and procedures carries a penalty of KYD 7,500

- Failure to establish and maintain written policies and procedures to enable the identification of the jurisdiction of tax residency of Account Holders or Controlling Persons carries a penalty of KYD 7,500
- Failure to establish and maintain written policies and procedures that apply the due diligence procedures set out in the CRS carries a penalty of KYD 7,500
- Failure to register on the DITC portal by the notification deadline of 30 April carries a penalty of KYD 37,500
- Failure to provide an update via the DITC portal to inform the tax authority of changes to reporting obligations, entity classification, or authorized users carries a penalty of KYD 10,000
- Failure to submit a CRS return carries a penalty of KYD 5,000 (penalty per reportable account)
- Failure to submit a nil return or provide any further information (e.g., CRS filing declaration and CRS compliance form) carries a penalty of KYD 10,000
- Financial institution relies on self-certification that it knows or has reason to believe is inaccurate and makes a return based on this self-certification carries a penalty of KYD 20,000

## U.S. Partnership Representative – Filing / Extension Filing Deadline

Through enactment of legislation which came into effect for tax years beginning 1 January 2018, the United States IRS has streamlined the partnership audit and collection process. The new rules apply to an entity electing to be treated as a partnership for income tax purposes. Partnership Representative (PR) replaces Tax Matters Partner (TMP). Most Cayman domiciled funds (Ltd and LP) with US investors or Effectively Connected Income (ECI) or income derived from sources in the US will be required to file the IRS Form 1065.

The filing deadline for the IRS Form 1065 is the 15th day of the 3rd month after the end of the tax year for the return. For calendar year end filers this year's deadline will be 15 March 2023.

The Partnership Representative must be named on the partnership tax return via IRS Form 1065. The Partnership Representative must also have a substantial presence in the United States. A substantial presence requires the Partnership Representative to have:

- a U.S. taxpayer identification number
- a U.S. telephone number and a U.S. street address
- be available to meet in person with the IRS at a reasonable time and place and
- if the Partnership Representative is an entity, the partnership must appoint an individual who meets the substantial presence requirements to act as the “designated individual” of the entity serving as Partnership Representative.

Please discuss the timing of your filings with your tax advisor. With its years of experience, Waystone has streamlined the onboarding process and can accommodate services in as quick as 2-3 days, however, it would be highly recommended to engage a service provider as early as possible.

## ESG

### Cayman

In its circular of 13 April 2022, CIMA referenced the growth in [ESG](#) and sustainable investing strategies, in addition to the regulatory challenges ESG posed. In reference to complexity and evolving expectations around ESG risks, CIMA stated:

“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 should start establishing reliable approaches for identifying, measuring, monitoring, and managing material ESG-related risks.”

### Europe

Effective as of 1 August 2022, a wide range of new EU legislative measures, collectively referred to as the “Delegated Act”, take effect. These measures focus on [UCITS and AIFMD](#) changes and the practical implications for UCITS management companies and AIFMs in the context of existing SFDR requirements. Under the new requirements, UCITS management companies and AIFMs must look through a sustainability lens at risk management procedures and processes, investment decision making processes, organisational structure and resources, governance, oversight, reporting and conflicts of interest management. As a result, where functions have been delegated by the management company, e.g., portfolio management, the new requirements may have an indirect impact on the delegate irrespective of whether the delegate is domiciled in Europe or not. Additionally, EU SFDR Article 6, 8 and 9 Funds will be further assessed by the degree to which they are aligned to core measures of sustainability. The enhancements to the [EU MiFID](#) target market rules will require fund distributors to gather more information from Fund manufacturers to facilitate target market considerations to include [European ESG](#) criteria, that is, the EU MiFID Sustainable Preferences. A new EU-wide reporting template (the European ESG Template or EET) which has been created due to the need to standardise reporting of the Regulatory Technical Standards (RTS) associated with the Sustainable Finance Disclosure Regulation (SFDR). The EET complements the EMT and contains a mix of fields relating to manufacturer, product or financial instrument data as well as principal adverse indicators (PAI’s), screening criteria and country specific information. It will support investment managers in providing consistent reporting on ESG criteria ahead of the SFDR level 2 RTS implementation on the 1 January 2023.

Effective 1 January 2023, for financial products subject to Articles 8 and 9 of SFDR, precontractual and periodic disclosure information is required in the format of templates set out in the annexes of the SFDR RTS.

SFDR aims to reduce information asymmetries in principal-agent relationships concerning the promotion of E or S characteristics and sustainable investment objectives. To that end, that SFDR requires financial market participants (“FMPs”) to make pre-contractual and website disclosures to end investors when they act as agents of those end investors. For that requirement to be fully effective, FMPs should monitor throughout the lifecycle of a financial product how that product complies with the disclosed E or S characteristics, or with the sustainable investment objective. FMPs should therefore explain, as part of their website disclosures, the internal or external control mechanisms put in place to monitor such compliance on a continuous basis.

FMPs should use website sustainability-related disclosures to expand on topics disclosed in a concise way in pre-contractual documents and to provide further information relevant to those end investors. The website product disclosure should provide additional details about the investment strategy used for the financial product concerned, including the policy to assess good governance of investee companies, and the methodologies used to measure whether the financial product meets the E or S characteristics or attains sustainable investment objectives. Moreover, FMPs should publish on their website a clear, succinct and understandable summary of the information provided as part of the periodic reporting.

FMPs are required to keep the information published on their websites in accordance with the SFDR up to date, including the date of publication of the information and the date of any update.

By 30 June each year, the financial market participants considering PAIs of investment decisions on sustainability factors, or large companies as referred to in Article 4(3) or Article 4(4) of SFDR, shall publish on their website, in a separate section titled: 'Statement on principal adverse impacts of investment decisions on sustainability factors', the information referred to in Article 4(1), point (a), of SFDR, in Article 4(2), (3) and (4) of SFDR, and in Articles 4 to 10 of the SFDR. That information shall cover the period of 1 January until 31 December of the preceding year, and shall be published in the section 'Sustainability-related disclosures' referred to in Article 23 of SFDR.

FMPs who do not consider PAI of investment decisions on sustainability factors as referred to in Article 4(1), point (b), of SFDR shall publish the information referred to in Article 4(1), point (b) (i.e. clear reasons for why they do not do so, including, where relevant, information as to whether and when they intend to consider such adverse impacts), of SFDR in a separate section of their website titled 'No consideration of adverse impacts of investment decisions on sustainability factors'. The statement referred to in paragraph 1 shall contain all of the following: (a) a prominent statement that the FMP does not consider any adverse impacts of its investment decisions on sustainability factors; (b) the reasons why the financial market participant does not consider any adverse impacts of its investment decisions on sustainability factors and, where relevant, information on whether the FMP intends to consider such adverse impacts by reference to the indicators listed in Table 1 of Annex I, and if so, when such adverse impacts will be considered.

Taxonomy regulation ("TR") amending SFDR requires FMPs for those financial products subject to Articles 8 and 9 of SFDR to provide by 1 January 2023 for transparency in precontractual documents and periodic reports with regard to the environmental objectives referred to in Article 9, points (c) to (f) of TR.

## USA

On May 25th, the SEC proposed amendments to rules and reporting forms to promote consistent, comparable, and reliable information for investors concerning funds' and advisers' incorporation of environmental, social, and governance (ESG) factors.

The [proposing release](#) acknowledges approaches to ESG investing vary, which can pose challenges for investors choosing among investment products and services. The SEC found that some funds focus on only one issue under the ESG umbrella (e.g. a focus on environmental issues, social issues, or governance issues) and others are applying factors more broadly and implementing measures across each of the ESG categories.

The release notes that investment products generally fall along a three-part spectrum:

1. ESG Integration – considering one or more ESG factors alongside other, non-ESG factors in investment decisions such as macroeconomic trends or company specific factors like a price-to-earnings ratio.
2. ESG-Focused – focusing on one or more ESG factors by using them as a significant or main consideration in selecting investments or in engaging with portfolio companies.
3. ESG Impact – strategies with a stated goal that seek to achieve a specific ESG impact or impacts that generate specific ESG-related benefits.

Under the proposed rules:

- Funds that say they consider ESG factors would be required to provide investors with information in the prospectus about the ESG factors they consider, along with the strategies they use. This could include, for example, whether a fund tracks an index, excludes or includes certain types of assets, uses proxy voting or engagement to achieve certain objectives, or aims to have a specific impact.
- ESG-Focused funds would need to disclose details about the criteria and data they use to achieve their investment goals, as well as more specific information about their strategies. These disclosures would enable investors to dig into the details of a fund's strategy.
- Certain ESG-Focused funds would be required to disclose relevant metrics. For example, most environmentally focused funds would be required to report the greenhouse gas emission metrics of their portfolios, and an impact fund would be required to disclose metrics about and annual progress toward its ESG goals.
- The proposals would also require ESG-focused funds to present information in a standardized, tabular format, enabling investors to quickly identify the types of ESG strategies being used, and to easily compare with other funds.
- In addition, under the proposal, certain investment advisers would be required to disclose similar types of information as registered investment companies regarding their ESG factors and strategies in annual reports and adviser brochures. These disclosures would be tailored to help clients make an informed decision about whether to engage an adviser and how to manage that relationship.

The SEC also introduced a proposed update to the “Names Rule,” in a separate release ([Investment Company Names, Investment Company Act Release](#)) clarifying the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus that the fund's name suggests. While the proposed rule does not apply exclusively to ESG funds, it specifically references the use of ESG Terminology in a fund name and states that “the use of ESG or similar terminology in a fund's name would deceive and mislead investors where the identified ESG factors do not play a central role in the fund's strategy.”

## Economic Substance

The Cayman Islands enacted The International Tax Co-Operation (Economic Substance) Act on 1 January 2019. The Economic Substance Notification (the “ESN”) is a prerequisite to filing the Annual Return with the Registrar of

Companies and is due annually on 31 January, and to be in good standing must be filed by 31 March. All entities in scope for the [Economic Substance Act](#) must submit an Annual Economic Substance Return ("ESR"), the deadline for submitting the ESR is 12 months after the period end date. The ESR must disclose the income and expenditure of the entity, demonstrate how the entity has satisfied the economic substance test and provide the management/financial accounts of the entity for the relevant period end. The entity is also required to disclose whether it had physical presence in the Cayman Islands in terms of assets and employees or whether it uses an outsourced service provider. For an entity that is using an outsourced solution for ES compliance, the outsourced service provider will typically complete filing of the ES Return on behalf of the entity.

Fund Management falls under the Securities Investment Business Act in the Cayman Islands and requires Securities Investment Business Registered Persons to file an annual declaration form with CIMA by 15th January each year.

On March 31 2022, industry was advised that Enforcement Guidelines in respect of Economic Substance frameworks were issued by the Tax Information Authority . These Enforcement Guidelines set out the Authority's principles and processes for taking enforcement action and apply to all persons within the scope of the Authority's compliance monitoring and enforcement powers. Furthermore, the guidelines outline the administrative penalties which may be imposed for various breaches of an entity's reporting obligations under the Economic Substance Act.

## Cayman Islands' AML Regulations

### Internal Audit plans – Rule and Statement of Guidance Internal Controls for Regulatory Entities

On 3 January 2023, CIMA published a Circular on 2023 Internal Audit Plans to all licenced Full and Restricted Securities Investment Licensees and Registered Persons ("SIB entities"), requesting confirmation of an internal audit review schedule for period from 1 January 2023 through to 31 December 31, 2023, and reminding the entities that a copy of the internal audit reports should be submitted to CIMA with 3 months of any report being issued.

In addition, CIMA circulated the proposed Rule and Statement of Guidance – Internal Controls for Regulated Entities (the "Guidance") at the end of last year for industry consultation and we understand that the Guidance will be gazetted during the first half of this year.

We understand that CIMA's circular was intended to ensure that all SIB entities are aware of their expectations for an internal audit and highlighted the new proposed Guidance that entities need to take into consideration.

### European Union 'Black-Listing' of the Cayman Islands

Following on from the Financial Action Task Force (FATF\*) adding Cayman to the List of Jurisdictions subject to increased monitoring ("FATF grey-list"), the European Union (EU) High Risk Country List (commonly known as the EU AML Blacklist), which contains a list of jurisdictions that the EU Commission considers to present strategic deficiencies in their [AML/CTF](#) regime that pose significant threat to the financial system of the Union, has been updated.

The EU Commission published the latest updated EU High Risk Country List, effective from 13 March 2022. A number of countries, including the Cayman Islands, were added to the List.

This means that EU-based organisations will consider Cayman-domiciled entities as high-risk from an AML/ CFT perspective, resulting in the use of enhanced customer due diligence. This move and listing was expected. Historically, the EU has generally added any jurisdiction which is on the FATF grey-list to the EU AML Blacklist.

Since February 2021, when the Cayman Islands made a high-level political commitment to work with the FATF and CFATF to strengthen the effectiveness of its AML/CFT regime, the Cayman Islands has taken steps towards improving its AML/CFT regime, including by advancing ML prosecutions into convictions and demonstrating progress on complex ML cases with a foreign predicate. However, the Cayman Islands should continue to work on implementing its action plan to address its remaining strategic deficiencies, by demonstrating that they are prosecuting all types of money laundering cases in line with the jurisdiction's risk profile and that such prosecutions are resulting in the application of dissuasive, effective, and proportionate sanctions.

The FATF expresses concern that the Cayman Islands failed to complete its action plan, which fully expired in May 2022. The FATF strongly urges the Cayman Islands to swiftly demonstrate significant progress in completing its action plan by June 2023 or the FATF will consider next steps if there is insufficient progress. Read the full release [here](#).

### 2021 Review of TCSPs Compliance with AMLRs: Sanctions Screening Policies and Procedures

Following on from the Supervisory Issues and Information Circular CIMA published on 19 January 2022 to report on their 2021 review of Trust and Corporate Service Providers ("TCSPs") compliance with AML Regulations ("AMLRs"), on 17 June 2022, CIMA published a Supervisory Issues and Information Circular on the 2021 Review of TCSPs Compliance with AMLRs specifically relating to sanctions screening policies and procedures (the "TCSP Sanctions Compliance Report").

TCSPs have to ensure that their clients are not subject to, or seeking to circumvent, targeted financial sanctions ("TFS"). When establishing a business and an ongoing relationship, TCSPs are required by the AMLRs to assess whether the client, its directors, shareholders, beneficial owners and other related parties are, or are involved with, persons or entities designated under the TFS applicable in the Cayman Islands.

CIMA is not responsible for enforcing TFS measures. However, where CIMA identifies failings in TFS policies and procedures it can impose restrictions and/ or impose enforcement action. The compliance framework of TCSPs (and all regulated entities) should therefore meet the TFS obligations under Regulations 5 and 12 of the AMLRs and the AML Guidance Notes.

The TCSP Sanctions Compliance Report outlines the findings of CIMA's assessment of compliance by TCSPs with TFS following inspections of 27 firms during 2021. CIMA reviewed 567 client files.

While CIMA found that 89% of TCSPs had adequate AML/CFT policies and procedures for ongoing monitoring and sanctions screening and that 63% of TCSPs had adequate AML/CFT policies and procedures for sanctions screening at onboarding, CIMA did note some common findings or deficiencies in relation to policies and procedures as follows:

### TFS screening at onboarding

- Ensuring that clients are adequately screened against all TFS lists applicable to Cayman.
- Keeping track of all TFS lists and updates applicable to Cayman.
- Ensuring that relevant parties involved in the business relationship are adequately screened against all TFS lists applicable to Cayman, irrespective of risk rating.
- Managing how false positive and potential matches are addressed, including the escalation process and timeframe for clearing the matches.
- Filing a Compliance Reporting Form (CRF) to the Financial Reporting Authority.

### TFS Screening as Part of Ongoing Monitoring

- Conducting periodic reviews of its TFS screening lists to ensure compliance.
- Keeping track of all the applicable TFS lists, and where the TFS lists are updated, ensure that existing customers are not listed.
- Implementing adequate risk-based procedures regarding periodic reviews or re-assessments.

### Third Party Reliance Testing for Agent/Nominees and Eligible Introducers

On 19 May 2022, CIMA published a circular reminding all regulated entities of their obligations in respect of the application of third-party reliance testing for a person acting as an agent/nominee (including nominee investors) (“Nominee”) or Eligible Introducer (“EI”) under Regulations 24 and 25 respectively of the Anti-Money Laundering Regulations 2020 (“AMLRs”) and the accompanying Guidance Notes, published on 5 June 2020.

Regulated entities are required to conduct third party reliance testing where an EI is being relied upon. Regulated entities are also required to obtain a written assurance in the form required in Regulation 24 of the AMLRs from a person acting as a Nominee for a principal and conduct third party reliance testing. The written assurance provided by the Nominee must confirm that the Nominee will provide to the regulated entity copies of identification and verification data obtained by the Nominee for the purposes of satisfying customer due diligence requirements. The Nominee must provide this information on request and without delay.

In the absence of such reliance testing, the person carrying out relevant financial business cannot be satisfied that either the EI or Nominee has conducted the requisite customer due diligence to obtain evidence of the identity of the principal or beneficial owner, and that the EI or nominee/agent is able to provide it upon request. In these circumstances, the person carrying out relevant financial business should decide whether it is still appropriate to continue to rely on Regulations 24 and 25.

### CIMA AML/CFT Activity Report and TCSP Report

On 19 January 2022, CIMA published a Supervisory Issues and Information Circular (“TCSP Report”) to report on their 2021 review of Trust and Corporate Service Providers (“TCSPs”) compliance with AML Regulations. This comes off the back of the publication of CIMA’s AML/CFT Activity Report (“Activity Report”) in late 2021.

Although the TCSP Report is applicable to TCSPs, CIMA has said that all Financial Services Providers operating in the Cayman Islands should be cognizant of both the Activity Report and the TCSP Report. The main deficiencies that CIMA highlighted in both reports are:

Missing or inadequate Customer Due Diligence information and documents.  
Ongoing monitoring inadequate and poorly documented.  
Lack of information on the source of funds and source of wealth.  
Inadequate evidence of identification and verification of Ultimate Beneficial Owners and authorized persons.  
Insufficient understanding of the purpose and intended nature of the business.  
Inadequate policies and procedures.  
Inappropriate methodology for the risk-based approach.  
Lack of evidence of screening against Sanctions lists.

CIMA advises that it will continue its vigorous AML oversight programme in 2022 and recommends that all firms should review their AML compliance programmes in the light of these reports.

## Cayman Data Protection Act

There have been no legislative changes since our last update.

In May 2022, the Ombudsman issued a [first quarterly report](#), for the period January 1 to March 31, showing statistics on data breach notifications received, inquiries answered and complaints received.

In September 2021, the Ombudsman issued an updated version of the Guide for Data Controllers, available [here](#). This latest version contains additional clarifications on international transfers, and amends references Data Protection Act (2021 Revision),

In October 2021, the Ombudsman issued general guidance on data protection issues Cayman employers must consider before recording employees' COVID-19 vaccination status. The guidance was issued in light of the recently approved vaccination requirements regarding work permit applications and renewals in the Cayman Islands. The advice stresses that any collection of vaccination status must respect the principles of data protection including lawfulness, transparency, purpose limitation and data minimization. The guidance is available [here](#).

## Voluntary Liquidation

With increasing sensitivity being accorded to the termination of companies and liquidation costs, it is the aim of Waystone Corporate Services to provide competitively-priced voluntary liquidation and strike-off services in a timely and efficient manner. Our services provide step-by-step management and guidance throughout the process, minimizing our clients' management time from the initial announcement of the intention to wind-up, until the company is formally dissolved by the Registrar of Companies (RoC). Our in-depth knowledge and expertise not only guarantee our clients an orderly and efficient windup process in accordance with relevant Cayman Islands laws and regulations, but also a maximum shareholder return through our management of costs.

Our fixed base fees are based on non-contentious voluntary liquidations. This fee includes the preparation of the required shareholder and director resolutions,

including the declaration of solvencies for the voluntary liquidation. We do not charge hourly rates.

On August 23, 2022 the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") published a Rule on Cancellation of Licences or Certificates of Registration for Regulated Mutual Funds and Private Funds issued pursuant to the Authority's powers under section 34(1)(a) of the Monetary Authority Act ("MAA"), as amended from time to time.

#### Rule:

A Fund shall notify the Authority when the Fund intends to cease carrying on, or has ceased to carry on business as a Fund pursuant to the MFA or PFA within 21 days from the date the Fund ceases to carry on business.

A Fund that has never carried on business shall notify the Authority for the cancellation of a licence or certificate of registration within 21 days from the date of the resolution that has been passed by the operators, shareholders or unit holders wherein it is acknowledged that the Fund has never carried on business and resolved that the Fund has no intention to commence business in the future.

In order to cancel its licence or certificate of registration, a Fund shall pay the surrender fee and submit all the documentation as prescribed by the Authority in the *Regulatory Procedure – Cancellation of Licences or Certificates of Registration for Regulated Mutual Funds or the Regulatory Procedure – Cancellation of Certificates of Registration for Registered Private Funds*.

#### Enforcement:

Whenever there has been a breach of the Rule, the Authority may impose penalties pursuant to section 34 of the MAA. In addition, the Authority's policies and procedures as contained in its enforcement manual, and any other powers provided in the MFA or PFA, and the MAA will apply.

### Waystone Updates

- Waystone held its annual Summit in New York in December with over 600 clients and industry partners attending – find out more about the event [here](#).
- Waystone moves to a new [global headquarters](#) in Dublin as its headcount grows to +800.
- Our latest webinar featured Waystone's expert panel discussing AML best practice and trends for Cayman Investment Funds – [listen to the full webinar here](#).
- Waystone's director of ESG, Rebecca Palmer, was recently featured in Net Zero Investor publication where she provided insight into how corporate lobbying is coming under greater pressure due to climate change. You can read the full article [here](#).
- Zoe Hudson and Curtis Wilson recently visited George Town Hospital to see the new wall artwork in support of Waystone's annual pledge to the family waiting area on the pediatric ward. Learn how Waystone is committed to making a difference in the communities in which we operate [here](#).

## Events

- April 23 – GAIM Cayman – Join us at the Ritz. [RSVP here.](#)
- April 23 to 26 – GAIM Ops Cayman. Find out [more](#) about how you can connect with our team during GAIM.
- March 24 – Waystone sponsoring CIASA Golf Day 2023.
- March 13 to 31 – Meet visiting Waystone Cayman directors – [Lynden John](#) and [Sophia Dilbert](#) in San Francisco, Los Angeles and New York
- March 9 - 100WF London Gala 2023. Learn more about the event [here.](#)
- February 17 - 100WF Cayman Gala 2023. Learn more about the event [here.](#)
- January 27 - Government Opens the Cayman Islands' First US-based Office. Learn more [here.](#)
- January 25 - 2023 Cayman Finance Breakfast Briefing in New York. Learn more [here.](#)