

Cayman Islands: Year-End Obligations

As 2022 draws to a close, we take this opportunity to remind Cayman Islands entities of certain regulatory obligations and filing deadlines.

Economic Substance

'Relevant entities' carrying out 'relevant activities' for the purposes of the International Tax Co-operation (Economic Substance) Act (As Revised) (the "ES Act") during 2021, with their financial year end on 31 December, are required to file their economic substance return ("ES Return") with the Department for International Tax Cooperation (the "DITC") no later than 31 December 2022. As this deadline falls on a Saturday, we would advise clients to ensure completion of their ES Return filing ahead of the deadline by Friday, 30 December 2022 to avoid incurring penalties.

Under the ES Act, a late penalty filing fee of US\$6,098 can be imposed together with an additional penalty fee of US\$610 for each day an ES Return remains outstanding.

All Cayman Islands entities and foreign registered companies are required to file an annual economic substance notification ("ESN") in January prior to the filing of annual returns (discussed below). Generally filed by the entity's registered office, ESNs are due by 31 January 2023.

Annual Returns and Annual Fees

In addition to filing the ESN, Cayman Islands entities are also required to file an annual return

and pay annual registration fees to the Registrar in January. The filing of annual returns and payment of annual fees is typically done by the entity's registered office.

From 1 February, an entity that has not filed its ESN and annual return nor paid its annual registration fee will be considered to not be in good standing unless and until these are submitted with penalties accruing from 31 March. The penalty is 33.33% of the annual fee payable by the entity for an annual return / annual fee submitted between 1 April and 30 June; 66.67% of the annual fee payable if submitted between 1 July and 30 September; and 100% of the annual fee payable if submitted between 1 October and 31 December.

To accommodate annual return filings, registered office fees for Cayman Islands entities are generally due annually on or before 31 December, 2022, including those for Maples Corporate Services Limited. Arrangements should be made to ensure payment of registered office fees promptly and prior to year-end, to facilitate the submission of statutory filings that may be due in January, 2023.

CIMA Registrants and Licensees

Entities registered with the Cayman Islands Monetary Authority ("CIMA") (including mutual funds and private funds) and licensees are required to pay their annual licensing / registration fees by 15 January. As 15 January falls on a Sunday in 2023, we would advise clients to

ensure payment of their fees are made ahead of the deadline, so that such fees can be remitted to CIMA no later than Friday, 13 January 2023, to avoid incurring penalties.

Part VIA of the Monetary Authority Act (As Revised) (the "MAA") affords CIMA statutory powers to impose administrative fines for breaches committed by persons (entities and individuals) of provisions or rules prescribed under the MAA, the "Regulatory Acts" (as defined under the MAA), and the Anti-Money Laundering Regulations (As Revised) (collectively, the "Administrative Fines Regime"¹).

The Administrative Fines Regime is extremely comprehensive, such that breaches (which include the failure to comply with applicable filing deadlines) have the potential for substantial administrative fines to be imposed by CIMA.

Breaches are categorised as being 'minor', 'serious' or 'very serious'. There is a sliding scale of fines from US\$6,100 for minor breaches; up to US\$61,000 for individuals and up to US\$122,000 for entities for serious breaches; and up to US\$122,000 for individuals and US\$1.22 million for entities for very serious breaches. Fines for ongoing minor breaches can be applied at intervals on a continuing basis, up to a US\$30,500 cap.

Registered and Licensed Directors

Directors registered or licensed with CIMA under the Directors Registration and Licensing Act (As Revised) ("DRLA") are also required to provide annual information and pay their annual licensing / registration fee by 15 January. As this date falls on a Sunday in 2023, we again advise clients to ensure they complete their filings and make their

payment ahead of the deadline, by Friday, 13 January 2023, to avoid incurring penalties.

A CIMA-registered or licensed director who fails to pay the prescribed fee by 15 January will be subject to a surcharge of 1/12 of the fee for every month or part of a month after 15 January that the fee is not paid. Failure to pay the annual fee due under DRLA on time exposes the director to a minor breach under the Administrative Fines Regime and a potential monthly fine of US\$6,100 (capped at US\$24,390).

Directors who are coming off all 'covered entities' are reminded to file their de-registration application under the DRLA prior to 31 December 2022, wherever possible, in order to avoid incurring 2023 annual fees. To de-register, a director must log in to CIMA's Director Website Portal² and follow the links to surrender registration.

SIBA Registered Persons

All entities registered with CIMA under the Securities Investment Business Act (As Revised) ("SIBA") must file an annual declaration with CIMA. The due date for filing the annual declaration is typically 15 January. As this date falls on a Sunday in 2023, all forms should be completed and submitted, together with payment, to CIMA no later than Friday, 13 January 2023, ahead of the filing deadline. Penalties for late filing are as noted above under *CIMA Registrants and Licensees*.

Terminating Entities

Entities that are looking to terminate prior to year-end 2022 are also reminded of their requirement to satisfy applicable regulatory obligations throughout

¹<http://maples.com/pdf-cayman-islands-administrative-fine-regime-december-2020>

² <https://gateway.cimaconnect.com/>

their life cycle as well as until such time as the entity is wound up or dissolved.

Where requirements have not been adhered to over the life cycle of the entity, remediation of deficiencies together with any mandated de-registration filing particulars, must be completed prior to termination. In many instances, termination cannot be completed until such time as all outstanding regulatory requirements are satisfied and impacted entities may remain subject to, and need to make a reserve for, applicable 2023 related fees and costs.

In particular, terminating entities should consider any obligations (including post termination obligations) in relation to anti-money laundering, beneficial ownership, the Common Reporting Standard, FATCA and economic substance.

For more information on the voluntary liquidation of Cayman Islands companies, please refer to our update at *What Companies Need to Know About Cayman Islands Voluntary Liquidation*.³

Further Assistance

If you need additional advice relating to your year-end or ongoing regulatory compliance obligations, please contact us. We would be pleased to assist.

Cayman Islands

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³ <https://maples.com/en/knowledge-centre/2022/7/what-companies-need-to-know-about-cayman-islands-voluntary-liquidations>