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Regulatory Update

Caribbean – Q2 2024

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Quick Fire Updates

BVI UPDATES

1. ITA Notice on CRS categorisation

The BVI International Tax Authority (ITA) issued a [Notice](#) on 12 March 2024, requesting that entities who last updated their common reporting standard (CRS) entity classification prior to 2020, revisit the portal and update their classification. This request specifically applies to updates in entity classifications made before 2020 only and arises from recent updates to the BVI Financial Account Reporting System (BVIFARS) portal.

The Notice also advises that for any entity where the CRS classification status is uncertain or has never been included, the CRS classification status should be reviewed in the BVIFARS portal to ensure it is up to date and in compliance with regulatory standards. The reporting entity type and CRS entity classification can be updated by completing a change of reporting obligations filing.

2. ITA Notice on BVIFARS payments

On 5 March 2024, the ITA published a [Notice](#) providing that the payment component of the BVIFARS portal had been delayed. Users are requested to continue to fulfil their obligations as usual and to disregard any payment notifications until further notice. Once the payment component is Live, the ITA will provide a user guide that outlines how payment should be made.

3. BVIFARS annual fee

The [Mutual Legal Assistance \(Tax Matters\) \(Fees\) Order, 2024](#) was gazetted in the BVI on 28 March 2024, bringing into the force the annual fee payable by a relevant entity for the use of the BVIFARS portal.

The annual fee of US\$185 will be due on or before the 1 June each year. Failure to pay the annual fee by that date, will result in a late payment fee of 5% of the total fee for each month that payment is outstanding (up to a maximum of 60% of the total).

4. Fourth Round Mutual Evaluation Report

The [Fourth Round Mutual Evaluation Report \(MER\)](#) of the BVI was published by the Caribbean Financial Action Task Force on 27 February 2024. The report analyses the level of compliance with the FATF 40 Recommendations, as well as the level of effectiveness of the BVI AML/CFT system and provides recommendations on how the system could be strengthened.

The [BVI Government statement](#) (which links to the [National Action Plan](#)) confirmed that a number of actions are already underway in response to the Recommendations, including:

- commencement of a revision of the National AML/CFT Policy
- updating and implementing risk assessment frameworks and inspection processes of the Financial Investigation Agency (FIA) and Financial Services Commission (FSC)
- implementation of the virtual assets service provider (VASP) regulatory framework by the FSC

- drafting of legislation to address minor technical gaps identified in the MER
- ensuring that maintenance of beneficial ownership information is directly with a public authority
- commencement of the terrorist financing risk assessment of Non-Profit Organisations by the FIA
- establishment of a specific Sanctions Unit within the Attorney General's Chambers
- specific training for law enforcement agencies and other relevant authorities on money laundering investigative techniques and sanctions compliance
- measures to enhance coordination and cooperation amongst law enforcement agencies and other competent authorities
- plans to update the BVI's terrorist financing risk assessment and assess the specific risk posed to the jurisdiction by legal persons and legal arrangements
- introduction of a Compliance and Governance Master Course to provide industry professionals with essential knowledge and skills.

5. Meet the Regulator Forum

On 21 March 2024, the FSC hosted a 'Meet the Regulator' Forum with a focus on the roles that the FSC and the financial services industry will play in implementing the MER recommended actions.

The discussions considered what industry participants should expect as part of the FSC's compliance-seeking efforts, including increased AML/CFT compliance inspections, legislative changes, more targeted outreach to higher risk sectors and increased supervisory engagements. The Forum placed particular emphasis on the importance of collaboration and compliance with the stated measures in order to ensure the robustness and ongoing sustainability of the industry.

A related [Press Release](#) and [Meet the Regulator Presentation on the MER](#) have been posted on the FSC's website.

6. FSC Newsletter Q1 2024

The FSC published its first quarterly [Newsletter](#) of the year in March 2024. Some key headlines include:

- Reflections on the March 2024 Meet the Regulator Forum
- Implementing the 2023 Amendments to AML Code and Regulation: What the FSC will be looking for
- TCSPs AML Guidelines: A Tool for Demonstrating Compliance
- Dissecting the 2022 Money Laundering Risk Assessment: Higher Risk Sectors
- VASP AML Guidelines: A Tool for Demonstrating Compliance
- Fintech Regulations & Disputes: FSC DMDR Glenford Malone, Expert Panellist at BVI IAC's 5th Biennial Arbitration Week 2024
- World Intellectual Property Day: Q&A with the Registrar
- Industry Reminders: AML returns due 31 March and Authorisation and Supervision Division annual fees and filings due 31 March.

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7. FSC Industry Circular – AML returns filing deadline

The FSC published an [Industry Circular](#) on 27 March 2024 extending the deadline for filing AML returns to 2 April 2024, and providing that AML returns filed after 2 April will be subject to penalties.

The Circular also reminded regulated persons that manual filings of AML returns will no longer be accepted and all AML returns must be filed online using the VIRRGIN Portal.

8. Rules on Economic Substance updated

An updated version 4 of the [Rules on Economic Substance](#) dated 2 April 2024 has been released by the ITA. Rule 5 has been amended to exclude the United Arab Emirates (UAE) from the list of jurisdictions without a corporate tax system.

The amendment provides that a legal entity will not be regarded as tax resident in the UAE for financial periods before 1 June 2023, when the UAE introduced a Corporate Income Tax. A legal entity claiming to be tax resident in the UAE must therefore ensure that such claim only relates to financial periods beginning on or after 1 June 2023.

9. Reportable and participating jurisdictions for CRS

The BVI list of participating jurisdictions for CRS was gazetted on 8 February 2024, adding Bulgaria, Costa Rica and Saint Kitts & Nevis.

An updated BVI list of reportable jurisdictions for CRS was gazetted on 14 March 2024, adding:

- Costa Rica added for exchanges in 2021
- Peru added for exchanges in 2023
- Bulgaria and Saint Kitts & Nevis added for exchanges in 2024.

10. ITA Notice on requests for financial period alterations

On 25 January 2024, the ITA published a [Notice](#) reminding all authorised representatives making an application to alter a legal entity's financial period (except its first financial period) that the application should be made by way of notice to the ITA containing the following information:

- its registered name
- its registered number
- the name and address of its RA
- the current commencement date of its next financial period
- the proposed new commencement date of its next financial period
- brief reasons for the proposed commencement date alteration.

11. Changes to Russia sanctions regime

From 14 March 2024 onwards, BVI entities will be able to apply for a licence under a new Part 1ZA of Schedule 5 to the Russia

(Sanctions) (EU Exit) Regulations, 2019 (as amended and extended to the BVI with modifications).

This new Part 1ZA provides two new licensing grounds or 'derogations' permitting the divestment of assets, namely:

- to facilitate a 'relevant transfer', meaning a transfer of funds or economic resources which are owned, held or controlled by the BVI entity but located in Russia, where those assets are transferred to a 'person concerned' (ie, the Government of Russia or a designated person) in order to facilitate the divestment of those assets; and
- to allow action to be taken by a BVI entity in order to enable another person to undertake a relevant transfer.

In certain circumstances, these new derogation grounds may also be used by a BVI entity to take action required to acquire an interest in that entity from a person concerned.

12. Updated MLRO Notification of Appointment Form

On 9 February 2024, the FIA issued an updated Money Laundering Reporting Officer (MLRO) [Notification of Appointment Form](#). This Form should be used to notify the FIA of proposed MLROs or persons who have been chosen to discharge the duties of an MLRO in the MLRO's absence.

13. Additional FSC publications

The FSC has issued its [Q3 Statistical Bulletin](#) and [Q4 2023 Statistical Bulletin](#), providing statistics information and analysis on financial services activities for the relevant period.

The FSC's [Annual Report 2022](#) was published in late February, providing details of the operations and activities undertaken in 2022, together with the FSC's [Strategic Work Plan 2024](#) which, amongst other things, sets out the FSC's strategic priorities.

14. FSC-FIA Memorandum of Understanding

On 31 January 2024, the FSC and the FIA entered into a [Memorandum of Understanding \(MoU\)](#) concerning cooperation in the exchange of information relating to due diligence, money laundering, terrorist financing and proliferation financing, and to assist generally in the preservation of the reputation of the BVI as a financial centre.

The scope of information-sharing to be implemented pursuant to the MoU includes:

- requesting and providing information (spontaneously or upon request) on:
 - any person established in or connected to the BVI;
 - persons associated with such a person who are regulated or supervised by either the FSC or the FIA; and
 - persons who may be a threat to the integrity of the BVI's financial system;
- continuous sharing of information (including statistical data) regarding the above-noted classes of persons; and
- any other information which would aid in the fulfilment or furtherance of their mandates.

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Information shared under the MoU will be subject to applicable confidentiality laws.

15. Mourant Guides and Updates

Mourant has uploaded the following Updates and Guides to our website over the last quarter:

- Continuation by a foreign company into the BVI
- British Virgin Islands Private Trust Companies
- British Virgin Islands: Trusts
- British Virgin Islands non-charitable purpose trusts
- BVI: VISTA Trusts

CAYMAN UPDATES

16. EU AML delisting process completed

Following the removal of the Cayman Islands from the FATF grey list on 27 October 2023, the Cayman Islands was also removed from the European Union's list of high risk third countries for AML/CFT purposes with effect from 7 February 2024.

For further details, please see our [Update](#).

17. Beneficial ownership technical guidance for industry

On 15 March 2024, the Competent Authority for Beneficial Ownership issued technical guidance to industry stakeholders outlining how beneficial ownership filing of the new CSV files will be completed when the Beneficial Ownership Transparency Act, 2023 (the **Act**) comes into force. The CSV technical guidance will be available on the corporate administration portal (**CAP**) once the Act and regulations commence. As to timing, we are expecting the Act to be in force from May 2024, with enforcement of the new data fields to apply from 1 January 2025.

Regulations and general guidance on beneficial ownership obligations are expected to be issued for industry consultation imminently.

For more information on the beneficial ownership changes being introduced by the Act, please see our [Update](#).

18. Mourant Regulatory Conference

On 29 February 2024, Mourant held its annual Regulatory Conference at the Kimpton Seafire Resort, Grand Cayman. The conference included an opening message from Her Excellency the Governor, Jane Owen, a conversation with the Department for International Tax Cooperation (**DITC**), a session on cross-border regulatory issues, a strategy update from the Cayman Islands Monetary Authority (**CIMA**) and a presentation on the incoming changes to the Cayman Islands beneficial ownership regime.

See our summary of the Top 'take-aways' from the Regulatory Conference [here](#).

19. Companies Act amendments

The Companies (Amendment) Act, 2024 was gazetted on 11 March 2024 and, once in force, will amend the Companies Act to:

- vary the procedure for the reduction of share capital, in certain circumstances, to lower the costs for companies and make the process faster and more efficient;
- permit the repurchase or redemption of fractional shares;
- offer more flexibility for Cayman Islands structures by permitting a limited liability company or a foundation company to convert to an exempted company; and
- enable a foreign body corporate without a share capital to apply to be registered by way of continuation as a Cayman Islands exempted company.

The Amendment Act is expected to come into force in a phased approach. We will issue further updates as the various provisions come into effect.

For further details, please see our [Update](#).

20. CRS Date of Birth information: Industry reminder

On 22 March 2024, the DITC issued an [Industry Advisory](#) reminding industry that the date of birth (**DoB**) information for all individuals who are Reportable Persons (ie, both Account Holders and Controlling Persons) under the CRS is required to be reported, where the Financial Institution (**FI**) holds this information within its records.

The DITC expects an FI to hold DoB information in its records (irrespective of whether the account is a pre-existing account under the CRS) due to its AML obligations.

The Advisory notes that FIs must ensure that the correct DoB is provided for all individual Account Holders and Controlling Persons in CRS XML Returns for the 2023 Reporting Period (for which the deadline to report is 31 July 2024), and that a failure to include the DoB may result in compliance and enforcement action being taken against the FI.

The [Updates Bulletin](#) published by the DITC in March 2024 also notes this requirement and provides a useful [Explanatory Note](#)

21. Incoming changes to AMLRs

We are expecting changes to the Cayman Islands Anti-Money Laundering Regulations (2023 Revision) (the **AMLRs**) to be in front of Cabinet in the next few weeks. In summary, the main anticipated changes include:

- changes to include references to proliferation financing (in addition to money laundering and terrorist financing);
- reduction to the minimum one-off transaction value; this has been reduced from CI\$15,000 to CI\$10,000 (as this more closely aligns to the USD/EUR15,000 threshold required by the FATF);
- provisions relating to batch transfers of virtual assets and Designated Non-Financial Business and Professions (**DNFBPs**); and
- changes to regulation 8 (Assessment of risk).

22. Amendments to the Proceeds of Crime Act

The Proceeds of Crime Act (Amendment) Act, 2023 came partially into force on 31 January 2024, with the remaining provisions coming into force on 30 April 2024.

The amendments to the Proceeds of Crime Act (2024 Revision):

- reform the provisions relating to intelligence gathering and sharing, and investigations;
- provide protection against liability for persons appointed as supervisory authorities;
- ensure that the Proceeds of Crime Act conforms to international best practices;

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- modernise the conduct of prosecutions, which includes clarifying the evidential basis on which it may be shown that property is criminal property or is obtained through unlawful conduct.

23. Upcoming compliance deadlines

The DITC [Updates Bulletin](#) for March 2024 includes the following reminder of CRS and FATCA reporting deadlines, noting that the DITC Portal is open for 2023 CRS and FATCA XML uploads.

Reporting obligation	Deadline
Registration (Notification)	30 April 2024
2023 CRS Reporting	31 July 2024
2023 CRS Filing Declaration (Nil return)	31 July 2024
2023 FATCA Reporting	31 July 2024
2023 CRS Compliance Form	16 September 2024*

*Additional day added as the 15 September 2024 falls on a Sunday.

24. CIMA Climate Survey Circular

On 7 February 2024, CIMA launched a survey focussing on climate change and environmental-related risks. The survey was extended to all CIMA-regulated entities, including licensees and registrants, and the deadline for submission of the survey was 31 March 2024.

The objective behind the survey was to gather insight into the strategies, practices and challenges associated with climate change and environmental risk and their management by the financial services industry.

25. Changes to Russia sanctions regime

From 14 March 2024 onwards, Cayman Islands entities will be able to apply for a licence under a new Part 1ZA of Schedule 5 to the Russia (Sanctions) (EU Exit) Regulations, 2019 (as amended and extended to the Cayman Islands with modifications).

This new Part 1ZA provides two new licensing grounds or 'derogations' permitting the divestment of assets, namely:

- to facilitate a 'relevant transfer', meaning a transfer of funds or economic resources which are owned, held or controlled by the Cayman Islands entity but located in Russia, where those assets are transferred to a 'person concerned' (ie, the Government of Russia or a designated person) in order to facilitate the divestment of those assets; and
- to allow action to be taken by a Cayman Islands entity in order to enable another person to undertake a relevant transfer.

In certain circumstances, these new derogation grounds may also be used by a Cayman Islands entity to take the action required to acquire an interest in that entity from a person concerned.

26. Merchant Shipping Act, 2024

The Merchant Shipping Act, 2024 came into force on 11 March 2024, replacing the previous Merchant Shipping Act (2021

Revision), to bring the jurisdiction in line with international maritime standards and satisfy recommendations from the International Maritime Organization. It also provides clarification and simplification on administrative processes undertaken by the Maritime Authority of the Cayman Islands.

27. AML Guidance Notes updated

On 16 February 2024, updated [Guidance notes on the prevention and detection of money laundering and terrorist financing in the Cayman Islands](#) were issued. The amendments to the previous version relate to the Sector Specific Guidance for Virtual Asset Service Providers in Part IX.

28. Cayman's history of cooperation

On 26 March 2024, the Ministry of Financial Services and Commerce published a [Cooperation Timeline](#) showing the Cayman Islands' long history of international cooperation, including significant enhancements to the Cayman Islands financial services industry.

29. Rule and Statement of Guidance: Nature, Accessibility and Retention of Records for Company Management Licensees

The [Rule and Statement of Guidance](#) on Nature, Accessibility and Retention of Records for Licensees Conducting the Business of Company Management (the **Measure**), which was issued by CIMA in August 2023, came into force in relation to pre-existing licensees on 1 April 2024. The Measure came into effect immediately upon publication in August 2023 in respect of new licensees.

The Measure now applies to all licensees under the following laws which conduct the business of company management:

- Banks and Trustee Companies Act
- Companies Management Act
- Mutual Funds Act
- Insurance Act.

30. Rule and Regulatory Policy on Domestic Systemically Important Deposit Taking Institutions

CIMA introduced a [Rule](#) on Domestic Systemically Important Deposit Taking Institutions (**D-SIDTIs**) in May 2023. This Rule, together with a new [Regulatory Policy](#) on D-SIDTIs will take effect on 27 May 2024.

The Rule imposes a higher loss absorbency requirement (a surcharge over the minimum regulatory capital requirement) on those deposit taking institutions designated by CIMA as D-SIDTIs pursuant to the Regulatory Policy.

D-SIDTIs may also be made subject to restrictions on discretionary distributions communicated by CIMA pursuant to the Regulatory Policy, as well as additional reporting obligations.

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31. Rule and Statement of Guidance: Reinsurance Arrangements

CIMA's [Rule and Statement of Guidance](#) on Reinsurance Arrangements, which was published in May 2023, will become effective on 27 May 2024.

This Rule and Statement of Guidance applies to all insurers and registered portfolio insurance companies, supervised by CIMA under the Insurance Act, which use outward reinsurance.

32. CIMA Supervisory Circular - AML/CFT Remediation

A [Supervisory Circular](#) on AML/CFT remediation was published by CIMA on 29 December 2023.

The Circular clarifies how the CIMA monitors AML/CFT remediation by financial service providers (**FSPs**) and sets out the key elements of a successful remediation plan. FSPs are advised to use the Circular to strengthen their respective compliance programmes and ensure that any remediation plans they deploy are effective and adequate to meet their regulatory requirements.

33. 2024 Revision laws

In February of this year, consolidated 2024 revisions of various Cayman acts were gazetted, including the following revised financial services legislation:

- Companies Management Act (2024 Revision)
- International Tax Co-operation (Economic Substance) Act (2024 Revision)
- Money Services Act (2024 Revision)
- Partnership Act (2024 Revision)
- Proceeds of Crime Act (2024 Revision)
- Virtual Assets (Service Providers) Act (2024 Revision).

34. Mourant Guides and Updates

Mourant has uploaded the following Updates and Guides to our website over the last quarter:

- [Key fund trends and takeaways from the 22nd Annual International Conference on Private Investment Funds](#)
- [Further enhancements to Cayman Islands companies law introduced](#)
- [Top 'take-aways' from the 2024 Mourant Regulatory Conference](#)
- [Cayman Islands Fund Finance Report 2023](#)
- [Investment funds in the Cayman Islands](#)
- [Mutual funds in the Cayman Islands](#)
- [Cayman Islands: Foundation Companies](#)
- [Cayman Islands: Trusts](#)
- [Registration of aircraft in the Cayman Islands](#)
- [Soaring ahead: Exploring the latest trends and developments in aircraft finance](#)

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