

UPDATE

An ABC of regulation – a snapshot of the BVI's key regimes

In the increasingly complex area of financial regulation, here is a simple summary of the BVI's key regulatory regimes and, where applicable, recent developments.

Introduction

As a leading international finance centre, the British Virgin Islands (**BVI**) is committed to ensuring compliance with international standards on financial regulation. The BVI has introduced, and continues to update, anti-money laundering (**AML**) and counter financing of terrorism (**CFT**) legislation and regulations, together with legislation implementing international standards on the exchange of information.

This update aims to provide a snapshot of the current status of the main regulatory requirements/regimes in the BVI.

The ABC of regulation

A is for AML

General

The BVI's AML/CFT regime is applicable to persons conducting "relevant business", which definition includes regulated financial services business, as well as investment business and mutual funds within the meaning of the Securities and Investment Business Act, 2010 (as amended, **SIBA**). Persons who conduct relevant business, referred to as **relevant persons**, must¹:

- (a) maintain customer identification and verification procedures, record-keeping procedures, internal reporting procedures (including the appointment of a Money Laundering Reporting Officer) and appropriate internal controls and communication procedures to forestall and prevent money laundering;
- (b) ensure that employees are made aware, and kept aware, of the procedures described in (a) above, as well as the provisions of the BVI's key AML/CFT legislation²; and
- (c) provide employees with training to assist them in:
 - (i) the recognition and handling of transactions involving, or appearing to involve, money laundering; and
 - (ii) dealing with persons and handling transactions where a report of suspicious activity has been made to the Financial Investigation Agency or its Steering Committee in accordance with the PCL, all in accordance with the relevant provisions of the AMLRs and the policies set out in the Code.

¹ S. 3(1), Anti-Money Laundering Regulations, 2008 (as amended, the **AMLRs**).

² The Proceeds of Criminal Conduct Act, 1997 (as amended, the **PCL**) and its subsidiary legislation, the AMLRs and the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (as amended, the **Code**).

Recent developments

The Code was recently amended to reflect the digital capabilities and practices of many businesses today, particularly those in the fintech, crypto-currency and crypto-asset industries; creating additional clarity in the BVI's AML/CFT regime.

The Code now includes provisions:-

- Permitting verification of identity by electronic/digital means, in addition to physical paper form. The term "electronic/digital means" is to be given broad interpretation, including verification by digital, electrical, magnetic, optical, biometric and photonic form.
- Stipulating the procedures which must be adopted, and additional measures which may be adopted, to safeguard the use of electronic, digital or other data resources to verify identity, including ongoing monitoring/testing of the source.
- Allowing an entity to rely on electronic/digital data of third party service providers in order to conduct verification. In such situations, the service provider must satisfy certain conditions, including independent operation, use of a wide range of information and data sources (both positive and negative), use of transparent processes and lack of criminal convictions or sanctions for data-related offences.
- Stating when an entity may not rely on electronic/digital records, including where records cannot be displayed in legible form, or where records, a digital signature or other authentication appear to be damaged, altered or incomplete.
- Stipulating that where electronic or digital verification is applied in relation to a non-face to face transaction, the relevant applicant or customer need not be automatically regarded as high risk. Instead, an applicant for business or customer need only be treated as high risk where the person undertaking the identification and verification measures is satisfied that an assessment of high risk is merited.

B is for beneficial ownership

In 2017 the BVI introduced legislation³ creating the beneficial ownership secure search or **BOSS** system, which enables the sharing of beneficial ownership information relating to BVI companies with law enforcement authorities in the UK. This legislation implements a commitment made by the BVI to the UK Government in 2016⁴, similar to those made by the Crown Dependencies⁵ and other British Overseas Territories⁶ which are implementing, or have implemented, similar systems and procedures.

The BOSS system is not public and can only be accessed in limited circumstances by designated persons, who must be security vetted and subject to an oath of confidentiality. Currently searches will only be conducted upon receipt of a search request from the UK National Crime Agency's Financial Intelligence Unit.

Please see our guide titled "[BVI's beneficial ownership legislation](#)" for further information.

C is for CRS (and FATCA)

The BVI was an early adopter of the common reporting standard (**CRS**) and has imported both the CRS⁷ and FATCA⁸ automatic exchange of information regimes via the Mutual Legal Assistance (Tax Matters) Act, 2003 (as amended, the **MLAA**) and an intergovernmental agreement with the US. It is currently proposed

³ The Beneficial Ownership Secure Search System Act, 2017 and the Beneficial Ownership Secure Search System (Amendment) Act, 2017, which both came into force on 30 June 2017.

⁴ Exchange of Notes between the Government of the United Kingdom and the Government of the Virgin Islands in respect of the sharing of beneficial ownership information, 8 April 2016.

⁵ Alderney, Jersey, Guernsey and the Isle of Man.

⁶ Anguilla, Bermuda, Gibraltar, the Cayman Islands and the Turks and Caicos Islands.

⁷ The Common Reporting Standards for Automatic Exchange of Financial Account Information in Tax Matters.

⁸ United States Foreign Account Tax Compliance Act.

that the MLAA be amended to give effect to the OECD's Base Erosion and Profit Sharing Action 13: Country-by-Country Reporting.

Very briefly, BVI entities classified as "Reporting Financial Institutions" under CRS or "Reporting BVI Financial Institutions" under FATCA (which will include banks, custodian banks and investment entities) are subject to registration, ongoing reporting and due diligence obligations.

The BVI Financial Account Reporting System (BVIFARS) is the online portal used by the BVI International Tax Authority (the **ITA**) to accept submissions under:

- FATCA – annual enrolment deadline: 1 April, reporting deadline: 31 May; and
- CRS – annual enrolment deadline: 30 April, reporting deadline: 31 May.

The ITA has published comprehensive CRS Guidance Notes⁹ and FATCA Guidance Notes¹⁰, together with a technical BVIFARS user guide¹¹.

D is for data protection

Whilst the BVI are an Overseas Territory of the UK, the Islands are not a member state of the European Union and, accordingly, not subject to the requirements of GDPR¹². However, the BVI government has pledged to enact suitable data protection legislation, based on internationally-recognised principles, in the near future.¹³

Though there is currently no formal data protection legislation in the BVI, the BVI courts recognise common law duties of confidentiality and privacy. Entities which manage and maintain personal data will be subject to those common law duties, as well as any contractual confidentiality agreed to, save to the extent that they are required to comply with anti-money laundering, international information-sharing or similar legislation, or where an individual has specifically consented to disclosure.

E is for exchange of information

The international exchange of information (**EOI**) comes in various forms, whether automatic EOI in accordance with the CRS and FATCA regimes, or 'on request' EOI pursuant to bilateral tax information exchange agreements (**TIEAs**), double taxation treaties and the OECD's multilateral Convention on the Mutual Administrative Assistance in Tax Matters (the **Multilateral Convention**).

The BVI has entered into TIEAs with 28 countries/territories, has entered into one double taxation treaty with Switzerland and is currently one of the 112 jurisdictions participating in the Multilateral Convention.

In addition, the BVI took a step forward in this area in 2018, bringing the Tax Information Authority Act, 2018 (the **ITA Act**) into force in response to recommendations of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes¹⁴. The ITA Act establishes the ITA as a body corporate, rather than a division of the BVI Ministry of Finance and, demonstrating the BVI's commitment to meeting international standards on transparency and EOI, the functions of the ITA are stated in the ITA Act as including:

- ensuring that the BVI Government fulfils its obligations under TIEAs and similar agreements relating to mutual legal assistance on tax matters;
- monitoring the BVI's compliance with international obligations relating to cross border tax matters;
- administering and monitoring compliance with the ITA Act and other mutual legal assistance legislation in the BVI;

⁹ http://www.bvi.gov.vg/sites/default/files/ITA/guidance_notes_20161012154316.pdf

¹⁰ http://www.bvi.gov.vg/sites/default/files/guidance_notes_20-3-15_-_final_2.pdf

¹¹ http://www.bvi.gov.vg/sites/default/files/BVIFARS_User_Guide_Version_9.0.pdf

¹² The General Data Protection Regulation (EU) 2016/679.

¹³ <http://bvi.gov.vg/media-centre/speech-throne> and Chambers Global Practice Guides – Fintech – Law & Practice – British Virgin Islands 2018.

¹⁴ As set out in their supplementary peer review report on the BVI. (OECD 2015), Global Forum on Transparency and Exchange of Information for Tax Purposes Supplementary Peer Review Report: Virgin Islands (British) 2015: Phase 2: Legal and Regulatory Framework, OECD Publishing.

- developing appropriate legal, supervisory and monitoring mechanisms for the effective and efficient administration of mutual legal assistance legislation;
- maintaining contact and developing relations with foreign competent authorities, international bodies and associations in relation to tax matters, and providing assistance to foreign competent authorities in accordance with the BVI's mutual legal assistance legislation; and
- entering into memoranda of understanding and competent authority agreements with competent authorities within and outside of the BVI.

Mourant Ozannes

We have a dedicated team of lawyers and governance professionals that can help clients identify and comply with their obligations under the above regimes. Please do not hesitate to speak to your usual Mourant Ozannes contact or one of the team listed below for further information or advice.

Contacts

Rachael McDonald
 Partner, Mourant Ozannes
 BVI
 +1 284 852 1722
rachael.mcdonald@mourant.com

Sara Galletly
 Counsel
 London
 +44 20 7796 7623
sara.galletly@mourant.com

Saraid Taylor
 Senior Associate
 BVI
 +1 284 852 1715
saraid.taylor@mourant.com

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED