

mourant

# Regulatory Update

Caribbean – Q4 2019



## 1 Cayman data protection

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The new Data Protection Law (**DPL**) came into force on 30 September 2019. It gives individuals control over their personal data and protects against its misuse in both public and private sectors. Our update on the DPL can be found [here](#). We have also produced an in-depth, hands-on guide, which can be accessed [here](#). Lastly, our funds specific update on the DPL can be found [here](#).

## 2 Registers open to inspection?

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From 1 October 2019, any person is entitled, on payment of a US\$61 fee, to inspect a list of the directors of a Cayman company, or a list of the managers of a Cayman limited liability company (**LLC**). Inspections may be conducted via two kiosks at the General Registry offices in George Town and the list of directors/managers capable of being inspected:

- provides a list of the current directors/managers, not past directors/managers; and
- is a separate list of directors/managers prepared by the Registrar (not the register of directors/managers), so does not provide any address information.

In addition, searches may only be conducted by reference to entity name, and not by director/manager name.

## 3 BVI economic substance update

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In July 2019, the Inclusive Framework on BEPS approved the review of the BVI's economic substance legislation conducted by the OECD's Forum on Harmful Tax Practices (**FHTP**), finding the BVI's legislation to be in-line with the substantial activities standard for no or nominal tax jurisdictions under BEPS Action 5 and, therefore, "not harmful".

The key statute took effect from 1 January 2019 and was supplemented by a draft Code issued by the International Tax Authority (**ITA**). However, the ITA released a new set of Rules and Explanatory Notes to accompany the statute on 9 October 2019, which can be accessed [here](#). The Rules are not yet in force and will take effect concurrently with an amendment to the Beneficial Ownership Secure Search System Act, 2017 which has not yet been gazetted.

## 4 Cayman economic substance update

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As with the BVI, the Cayman Islands' economic substance legislation was found in July 2019 to be in-line with the substantial activities standard for no or nominal tax jurisdictions under BEPS Action 5<sup>1</sup> and, therefore, "not harmful".

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<sup>1</sup> See <https://www.oecd.org/tax/beps/resumption-of-application-of-substantial-activities-factor.pdf>

The key statute also took effect from 1 January 2019 and is supplemented by Guidance issued by the Tax Information Authority (**TIA**). The Guidance is currently version 2.0, though an updated version 3.0 is expected to be issued by the TIA together with additional sector specific guidance for all relevant activities in late October/early November.

All Cayman companies and LLCs, as well as foreign companies and LLCs registered in Cayman, will be required to complete an Economic Substance Notification as part of this year's annual return process. Whilst separate from the annual return form, the Notification will need to have been filed before a company can file its 2020 annual return, and any entity which has not filed its annual return by 31 January 2020 will not be in good standing. It is understood that the form of the Notification will be made available by the TIA, together with user guidance, in October.

## 5 Transparency regulations for Cayman trusts

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In August 2019, the Cayman Islands government introduced a suite of amendments to existing legislation and regulations, and a set of new regulations, that impose new obligations and requirements on trustees. See our Update [here](#) for more information.

## 6 BVI regulatory sandbox and innovation suite

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The BVI's Financial Service Commission hosted its annual Meet the Regulator Forum in July 2019, at which a call for increased digitization and continued innovation was issued. Key elements of this initiative, the regulatory sandbox and innovation suite, are set for introduction prior to the end of 2019.

The regulatory sandbox is aimed at providing small or start-up fin-tech businesses with the space to test and develop innovative strategies and ideas. It will allow participants to develop their ideas without being subject to full regulation, but with adequate supervision and oversight. Applications for participation in the sandbox are invited from the beginning of Q4 2019.

## 7 Amendment of Cayman's core corporate laws

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Several of Cayman's key corporate laws, including the Companies Law, the Mutual Funds Law and the Banks and Trust Companies Law, were amended effective 8 August 2019 to enable information retained by the Cayman Registrar in relation to Cayman companies LLCs to be accessed by a discrete number of regulatory bodies (including the Anti-Corruption Commission, the Cayman Islands Monetary Authority (**CIMA**), the Financial Reporting Authority and the TIA) where required under anti-corruption and anti-money laundering legislation.

In addition:

- New details must be recorded in company registers of members, including the number and category of shares held and whether shares carry voting rights (and, if so, whether such rights are conditional). Failure to comply leads to a fine of US\$6,098. Companies in existence when the amendments came into effect have 6 months (ie, until early February 2020) to comply.
- Cayman companies and LLCs will have to update their registers of directors/managers within a shorter period of 30 days (rather than 60 days) of making any change.

## 8 Extensions of CIMA's mutual funds enforcement powers

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The Cayman Islands Mutual Funds Law was amended effective 8 August 2019 to enhance CIMA's enforcement powers within the funds space. These amendments extend the situations in which CIMA may exercise its enforcement powers against regulated mutual funds (or EU Connected Funds) or licensed mutual fund administrators, including where there is a breach of beneficial ownership legislation.

These amendments also require auditors to provide CIMA with written notice where there is knowledge or suspicion of a contravention by a licensed mutual fund administrator with the beneficial ownership legislation applicable to corporate service providers of companies, LLCs or limited liability partnerships.

## 9 Changes to penalties for breach of Cayman's beneficial ownership legislation

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The fines and other penalties applicable to a breach of the Cayman beneficial ownership regime for companies and LLCs have been amended.

A tiered system has been introduced where there is a failure to establish or maintain a beneficial ownership register. Increasing fines apply on convictions for offences. However, where there is conviction for a third offence, the Registrar may also apply for the entity to be struck off in certain circumstances.

The penalties applicable to other beneficial ownership offences, including the failure to provide information, have also been amended to a tiered system.

## 10 AML and virtual assets in the Cayman Islands

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The Proceeds of Crime Law (2019 Revision) was amended in June 2019 to include the provision of virtual asset services within the definition of "relevant financial business". As a result, persons or entities conducting virtual asset services fall within scope of the Cayman Islands' anti-money laundering (AML) and counter the financing of terrorism

(CFT) regime and are required to comply with the Anti-Money Laundering Regulations (2018 Revision) and other AML/CFT legislation.

These amendments were adopted in response to FATF Recommendation 15 (New Technologies), which was amended in October 2018 to require countries to ensure that virtual asset service providers (VASPs) are regulated for AML/CFT purposes, and show the continuing commitment of the Cayman Islands to adopting and implementing the highest international standards. It is anticipated that new legislation will be adopted in due course, providing for supervision of VASPs in order to ensure compliance with the AML/CFT regime.

## 11 Changes to Securities Investment Business Law

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The Securities Investment Business Law (2019 Revision) (as amended, SIBL), was amended in June 2019 and the excluded person regime has been replaced by a new, 'registered person' regime. Entities registered as excluded persons under SIBL who wish to continue to carry on business in or from the Cayman Islands have until 15 January 2020 to re-register as a registered person.

In order to re-register, a SIBL excluded person must complete and file the relevant application form via CIA's Regulatory Enhanced Electronic Forms Submission (REEFS) portal by 15 January 2020. In addition, a registered person which is a company must have a minimum of either (a) two directors who are individual, natural persons or (b) one corporate director which is regulated under the Directors Registration and Licensing Law, 2014<sup>2</sup>.

## 12 Fintech blog

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The global banking and financial technology sector, including the regulation surrounding it, is developing quickly, particularly in relation to the digital asset and cryptocurrency space. For updates on and specialist insight into these developments, please see the Mourant Fintech blog [here](#).

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<sup>2</sup> See [https://www.cima.ky/upimages/noticedoc/NoticetoIndustry\\_ReminderSIBLExcludedPersonsAML\\_CFTFormsandRegistration\\_1565392718.pdf](https://www.cima.ky/upimages/noticedoc/NoticetoIndustry_ReminderSIBLExcludedPersonsAML_CFTFormsandRegistration_1565392718.pdf) and [https://www.cima.ky/upimages/noticedoc/Notice-reonedirector\\_1566339764.pdf](https://www.cima.ky/upimages/noticedoc/Notice-reonedirector_1566339764.pdf)