

UPDATE

The current status of SAMLA in the BVI and the Cayman Islands

The imposition of public beneficial ownership registers in British Overseas Territories including the British Virgin Islands and the Cayman Islands under the UK's Sanctions and Anti-Money Laundering Act, 2018 has recently been delayed until at least 2023.

An introduction to SAMLA

The Sanctions and Anti-Money Laundering Act, 2018¹ (**SAMLA**) is a piece of UK legislation which received Royal Assent on 23 May 2018. The primary purpose behind SAMLA was and is to provide the UK with the ability to create an independent sanctions and anti-money laundering (**AML**) framework post-Brexit, when the UK will no longer be a member of the European Union.

Currently, the UK imposes all financial sanctions created by the United Nation's Security Council and the EU and, once the UK has left the EU, it needs to be able to make, amend and repeal sanctions legislation to ensure that the financial sanctions imposed by the UK are kept current. The provisions relating to the domestic sanctions regime are contained in Part 1 of SAMLA.

Part 2 of SAMLA, which consists of only three sections, relates to money laundering and terrorist financing. This Part allows the UK to pass regulations aimed at detecting, investigating and preventing money laundering and terrorist financing, as well as enabling the implementation of international standards set by the FATF combatting threats to the international financial system. Again, this legislation is aimed at allowing the UK to adopt legislation in-line with international standards post-Brexit, as the UK currently applies EU laws on money laundering which have been transposed into domestic law.

Impact on the BVI and Cayman

Sanctions

SAMLA will provide not only the UK but also the British Overseas Territories (**OTs**) with a means to ensure that sanctions continue to be adopted and applied in-line with international standards, post-Brexit. The sanctions-related provisions of Part 1 of SAMLA, and regulations made under them, may be extended to the OTs, including the British Virgin Islands (**BVI**) and the Cayman Islands, and the Crown Dependencies (Guernsey, the Isle of Man and Jersey) by order in council under Part 3 of the Act.

Public registers of beneficial ownership

Section 51 of Part 2 of SAMLA requires the Secretary of State:

- (a) to provide all reasonable assistance to the governments of the OTs to enable each OT to establish a publicly accessible register of the beneficial ownership of companies² registered in that jurisdiction; and

¹ http://www.legislation.gov.uk/ukpga/2018/13/pdfs/ukpga_20180013_en.pdf

² Meaning a register which, in the opinion of the Secretary of State, provides information broadly equivalent to that available under Part 21A (Information about people with significant control) of the Companies Act 2006.

- (b) no later than 31 December 2020, prepare a draft order in council requiring the government of any OT which has not adopted a publicly accessible register of the beneficial ownership of companies by that date, to do so.

This stated intention of the UK to force the OTs to adopt public beneficial ownership registers has caused controversy and consternation within the BVI and Cayman (amongst other jurisdictions), because:

- the register of persons with significant control (**PSCs**) required to be maintained by UK corporates in accordance with the Companies Act 2006, and which is publicly available in the UK via Companies House, has been the subject of much criticism regarding the lack of verification of information provided and, accordingly, the accuracy and incompleteness of the information accessible by law enforcement agencies; and
- this can be seen as the UK legislating for the OTs in devolved areas without their consent.

Current beneficial ownership position in the BVI and Cayman

Both the BVI and the Cayman Islands currently have legislation requiring certain entities with legal personality to establish and maintain registers of beneficial ownership. The key differences between those registers and the PSC-styles registers desired by the UK are that:

- the beneficial ownership registers currently maintained in Cayman and the BVI are not public. They are, however, subject to the information sharing regimes adopted by both jurisdictions, meaning that law enforcement agencies within the UK can obtain unrestricted and timely beneficial ownership information where required for the prevention and detection of corruption, money laundering, terrorist financing, financing the proliferation of weapons of mass destruction and other serious and organised crime; and
- the information required to be provided on beneficial owners under the BVI and Cayman regimes is provided to, and examined by, professional service providers, who are themselves subject to regulation and robust AML requirements. This is important when it comes to considering the quality of information accessible by law enforcement agencies and should be contrasted with the UK's PSC registers, where beneficial ownership information is not verified.

Current status

In January 2019, Lord Ahmad, the minister responsible for the OTs, informed the Foreign Affairs Select Committee that, where an OT had not adopted public beneficial ownership registers for companies by the end of December 2020, the Foreign and Commonwealth Office intended to issue an order in council requiring that jurisdiction to implement an operational public register by 2023. Accordingly, the current timetable for implementation is by 2023.

Next steps

If you have any questions or would like further information in this topic, please do not hesitate to contact us.

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