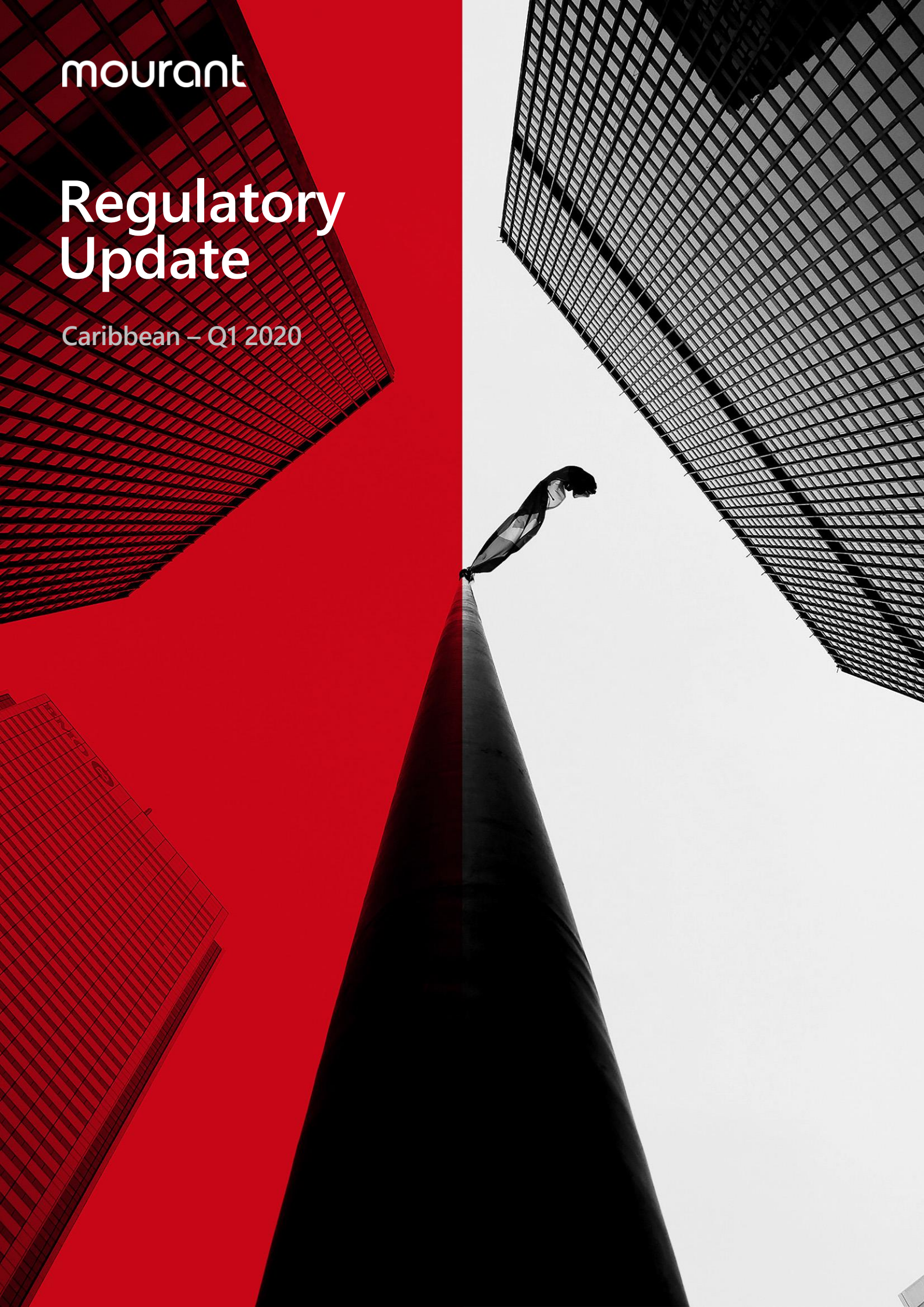


mourant

# Regulatory Update

Caribbean – Q1 2020



# Quick Fire Update

## 1. Regulation of private investment funds - BVI

The BVI Securities Investment Business Act, 2010 (as amended, **SIBA**) was amended with effect from 31 December 2019 to further comply with economic substance requirements for collective investment funds by introducing a new supervisory regime for private investment funds (**PIFs**). The transition period for existing PIFs to become compliant with the new requirements ends on 1 July 2020.

PIFs are defined as companies, partnerships, trusts or other bodies (whether incorporated under BVI law or otherwise) which:

- collect and pool investor funds for the purpose of collective investment and diversification of risk; and
- issue fund interests which entitle the holder to receive an amount based upon the value of a proportionate interest in the net assets of the vehicle.

Under the new Part IIIA of SIBA, a PIF may not carry out business in or from the BVI without being recognised by the BVI Financial Services Commission (**FSC**), and managers and other service providers may not promote or act for a PIF until it has been recognised.

Recognition under SIBA requires, amongst other things, the constitutional documents of a PIF to specify that:

- the fund cannot have more than 50 investors;
- invitations to purchase fund interests shall be made on a private basis only; or
- fund interests will be issued only to professional investors with a minimum initial investment of US\$100,000 (or its equivalent in any other currency).

The maximum penalty for carrying on PIF business without recognition is US\$75,000. The maximum penalty for persons acting or managing a PIF which has not been recognised is US\$75,000, and US\$50,000 for promoting an unrecognised PIF.

In addition, fund managers licensed under SIBA will be required to notify the FSC within 21 days of commencing to act as manager of any mutual fund or PIF.

Private Investment Fund Regulations, 2019 were also brought into force with effect from 31 December 2019, confirming (amongst other things):

- the requirements for a PIF recognition application;
- that a PIF must have at least 2 directors at all times;
- requirements as to the audit and filing of financial statements;
- requirements as to a PIF's valuation policy; and
- the requirement for a PIF to have an "appointed person" responsible for management of fund property, valuations and safekeeping of assets.

## 2. BVI – ITA issues Rules on Economic Substance

The BVI's International Tax Authority issued new Rules on Economic Substance in the Virgin Islands on 9 October 2019. Those Rules came into force on 31 October 2019, supplementing

the BVI's Economic Substance (Companies and Limited Partnerships) Act, 2018 (as amended, the **ES Act**), and superseding the draft Economic Substance Code previously issued in April 2019. A copy of the Rules can be found [here](#).

## 3. Update on BVI economic substance reporting under BOSS

The Beneficial Ownership Secure Search System (Time Limit for Filing Prescribed Information) Regulations, 2019 were issued in December 2019 and came into force retrospectively on 1 October 2019. These Regulations set the time limit for filing prescribed information on economic substance under the Beneficial Ownership Secure Search System Act, 2017 (as amended, **BOSS**) as the period of six months following the end of the financial period in question.

See our Guide on the BVI economic substance legislation [here](#) for more information.

In addition, the BVI's Limited Partnership Act, 2017 and Insolvency Act, 2003 were amended with effect from 24 December 2019 to allow the ITA to apply to the courts to appoint a liquidator to a partnership or company which has been operating in breach of the economic substance regime.

## 4. BVI adopts suite of secondary funds legislation

In connection with the amendment of SIBA, as described at 1 above), the BVI issued a suite of subsidiary legislation on 20 December 2019 which also came into effect when SIBA was amended on 31 December 2019. That secondary legislation brings the various BVI funds regimes in-line with certain requirements introduced in relation to PIFs, and includes the following:

*Mutual Funds (Amendment) Regulations, 2019*: which provide for (amongst other things) the requirement that private or professional funds under SIBA must maintain a valuation policy, and setting out the requirements for such valuation policies.

*Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019*: which provide for (amongst other things) the requirement that incubator funds and approved funds under SIBA must maintain a valuation policy, and setting out the requirements for such valuation policies.

*Mutual Funds (Foreign Funds) Regulations, 2019*: which provide for (amongst other things):

- the requirements for an application to be recognised by the FSC;
- that a recognised foreign fund must have at least 2 directors at all times;
- requirements as to service providers;
- requirements as to a recognised foreign fund's valuation policy; and
- requirements as to the audit and filing of financial statements.

*Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019*: which amend Schedule 1 to the Financial Services (Miscellaneous Exemptions) Regulations, 2010 to include

# Quick Fire Update

PIFs, incubator funds and approved funds from the requirement to appoint a compliance officer under the Financial Services Commission Act, 2001, and providing the FSC with the power to exempt a PIF from providing audited financial statements upon receipt of a written application.

*Anti-money Laundering (Amendment) Regulations, 2019*: which amend the definition of "relevant business" under the Anti-money Laundering Regulations, 2008 to include the business of a PIF, bringing PIFs within the scope of the BVI's AML/CFT regime.

## 5. BVI Business Companies Act and Regulations updated

The BVI Business Companies Act, 2004 (the **BVI BCA**) was amended with effect from 1 January 2020 pursuant to the BVI Business Companies (Amendment) Act, 2019. The amendments introduced by this amendment Act were minimal, including the requirement that companies which transfer into the BVI from another jurisdiction file a register of directors within 21 days and allowing a certificate of good standing to be issued in that interim 21 day period. Director registers are not public documents in the BVI.

In addition, the BVI Business Companies (Amendment) Regulations, 2019 amended the content of certificates of good standing issued under the BVI BCA to state that the relevant company has filed a complete register of directors with the Registrar, or is not yet due to do so. These amendments had retrospective effect from 1 October 2018.

## 6. BVI Regulatory Code amended

The BVI's Regulatory Code, 2009 (as amended, the **Code**), which applies to certain financial services and investment business licensees, was amended on 13 November 2019. The amendments include requirements that:

- licensees establish and implement staff training and development policies and procedures;
- licensees provide written terms of business to customers, such terms of business to include prescribed matters such as a description of the service to be provided and any fees;
- licensees adopt clear and fair advertising and promotion practices;
- licensees record any delegation of function by the board in writing;
- holders of certain trust licences must conduct an internal audit;
- compliance reports must be submitted to the FSC within 3 months after each year to which the report relates (and the section dealing with the contents of compliance reports has been repealed and replaced);
- a licensee must submit any auditor's management report and response to the FSC within 6 months of the financial year end; and
- licensed trust companies and licensed company managers must notify the FSC and their insurer of any claim or potential claim on their professional indemnity insurance.

Holders of certain trust licences must also have at least one director who is resident in the BVI.

The amendments will come into force with effect from 1 July 2020 in relation to licensees in existence prior to 13 November 2019.

## 7. BVI issues draft data protection legislation

A draft Data Protection Act, 2019 (Bill) was published in the BVI in mid-December 2019. The draft legislation is aimed at protecting data processed by public and private bodies and is subject to a consultation process before being finalised and adopted.

The Data Protection Act will be considered in more detail when it is issued in final form.

## 8. BVI intends to introduce 'e-Government' legislation

In connection with the draft Data Protection Act, 2019 (Bill), the BVI Government has published additional draft legislation in-line with a digital transformation agenda. The draft legislation includes:

- the Electronic Transactions Act, 2019 (Bill);
- the Electronic Funds Transfer Act, 2019 (Bill); and
- the Electronic Filing Act, 2019 (Bill).

The Electronic Transactions Act will replace the current Electronic Transactions Act, 2001 and will (amongst other things) confirm the legal requirements required for electronic communications, contracts records and signatures to have validity under BVI law.

The Electronic Funds Transfer Act will create a number of offences relating to the use of credit and other cards, as well as the date associated with any such card, including theft, forgery, dishonest or fraudulent use or fraudulent electronic funds transfers.

Finally, the Electronic Filing Act relates to the use and design of electronic forms for online transactions.

All of this legislation is in draft and is subject to consultation before being finalised and adopted.

## 9. BVI blacklisted by France

The BVI were added to France's list of non-cooperative territories for tax matters on 7 January 2020. BVI Premier Andrew Fahie responded on 9 January 2020, calling the situation a misunderstanding relating to a delay in responding to French requests or information, which his Government was working to resolve. Read more [here](#).

# Quick Fire Update

## 10. Changes to regulation of Cayman funds

---

Draft legislation has been published in the Cayman Islands which will introduce a new regime for the regulation of closed-ended, Cayman Islands private funds, and also change the way in which open-ended Cayman hedge fund vehicles are currently regulated.

View our Update [here](#) for more information.

## 11. Cayman economic substance update

---

Draft legislation will be debated by the Cayman Legislative Assembly in January amending the Cayman Islands' economic substance legislation (the International Tax Co-operation (Economic Substance) Law, 2018 (as amended, the **ES Law**)). This legislation is expected to clarify reporting obligations under the ES Law and introduce penalties for late filing of economic substance reports with the Cayman Tax Information Authority (**TIA**).

It is anticipated that a new version 3.0 of the Guidance on Economic Substance for Geographically Mobile Activities will be issued by the TIA at the same time that the ES Law is amended, and that this guidance will provide sector-specific guidance for each relevant activity.

Companies and LLCs registered in Cayman are currently filing their first economic substance notification (**ESN**) with the General Registry. The purpose of the ESNs is to identify those entities which are carrying on one or more relevant activities under the ES Law and, in such case, whether any exemption applies. The ESNs must be filed with the General Registry as a pre-requisite to the entity filing its 2020 annual return, and an annual return must be filed by 31 January 2020 in order for the vehicle to remain in good standing. However, no late filing penalties will be levied if the ESN and annual return are filed by 31 March 2020.

## 12. Reminder – Cayman company registers of members required to include additional information

---

As noted in the [Q4 2019 Regulatory Update](#), the Cayman Companies Law was amended in early August 2019, requiring Cayman companies to state in their register of members whether shares carry voting rights. Companies in existence at that time had 6 months to comply with the new requirement, and that period runs out in early February 2020.

Cayman companies should check with their service providers whether this requirement has been complied with, especially Cayman fund vehicles where investor registers are maintained by non-Cayman administrators or other service providers.

## 13. Extension of Cayman CRS and FATCA filing deadline

---

At an industry update on 10 January 2020, an extension of the CRS and FATCA filing deadlines from 31 May in each year to 31 July in each year was discussed. Legislation has not been adopted on this point as yet, but details will be included in this Update as and when that happens.

The Cayman Islands Department of International Tax Co-operation is also in the process of creating a new portal for filing of CRS and FATCA reporting, which can be expected to go live later in the year.

## 14. Cayman Government makes statement on public beneficial ownership registers

---

The Cayman Islands Government issued a statement on beneficial ownership in October 2019, announcing its intention to introduce public beneficial ownership registers when this becomes the international standard. [Read more.](#)

## 15. Cayman adopts 2020 Revisions

---

The Cayman Islands issued the 2020 Revision of some key laws and regulations on 9 January 2020, including the following:

- Anti-Money Laundering Regulations (2020 Revision);
- Banks and Trust Companies Law (2020 Revision);
- Companies Law (2020 Revision);
- International Tax Co-operation (Economic Substance) Law (2020 Revision);
- Mutual Funds Law (2020 Revision);
- Proceeds of Crime Law (2020 Revision);
- Securities Investment Business Law (2020 Revision); and
- Trusts Law (2020 Revision).