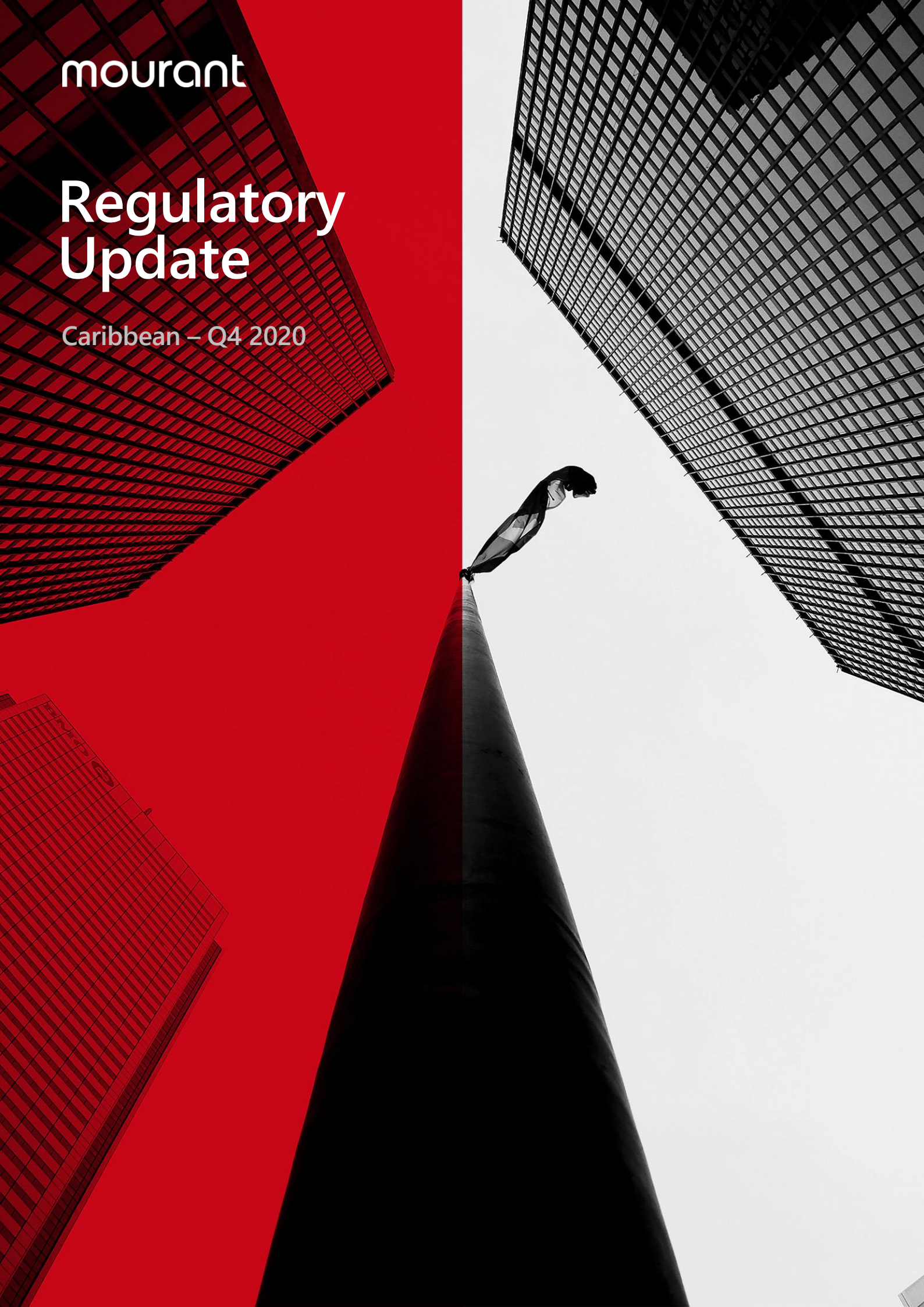


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# Regulatory Update

Caribbean – Q4 2020



## BVI UPDATES

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### 1. Private investment funds in the BVI – end of transition period

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The Securities and Investment Business (Amendment) Act, 2019 introduced a new supervisory regime for private investment funds in the BVI with effect from 31 December 2019. For private investment funds existing prior to that date, the transition period for compliance with the new regime ended on **1 July 2020**.

Please click [here](#) to read our Update on Private Investment Funds in the BVI.

### 2. FSC issues AML/CFT Guidelines for the Banking Sector

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On 1 July 2020, the BVI Financial Services Commission (the **FSC**) published new AML/CFT Guidelines for the Banking Sector, emphasising the role of banking institutions in preventing, deterring and combating money laundering, terrorist financing and proliferation financing.

The new Guidelines can be accessed via the FSC's website [here](#).

### 3. FSC issues Guidance on the Regulation of Virtual Assets

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On 13 July 2020, the FSC issued an Industry Update and published Guidance on Regulation of Virtual Assets in the BVI, both of which can be accessed [here](#).

The aim of the new Guidance is to clarify how existing legislation, including the Securities Investment Business Act, 2010, applies to virtual asset related activities. The Guidance also provides details of the activities currently outside the FSC's regulatory remit and which would not require any specific licensing or approval. For more information, see our Update [here](#).

### 4. Launch of BVI Regulatory Sandbox

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A regulatory sandbox (the **Sandbox**) launched in the BVI on 31 August 2020, pursuant to the Financial Services (Regulatory Sandbox) Regulations, 2020. The Sandbox allows businesses to trial new ideas for a period of up to 18 months under the supervision and monitoring of the FSC without the need to apply initially for a full licence to conduct financial services business.

The fees applicable to Sandbox participants will be US\$2,000 for a standard business model, US\$5,000 for a moderately complex business model and US\$10,000 for a complex business model.

For further details, click [here](#) for our Update on the Sandbox.

### 5. FSC to be notified of appointment of overseas insolvency practitioners

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The Insolvency Practitioners (Amendment) Regulations, 2020, came into force on 1 August, introducing a new requirement that the FSC be notified of the proposed appointment of an overseas insolvency practitioner, requiring payment of a US\$500 fee.

An **overseas insolvency practitioner** is defined in the Insolvency Act, 2003 as meaning an individual resident outside the BVI appointed to act as an insolvency practitioner under section 483 of that Act. Under the Insolvency Act, 2003, a person acts as an insolvency practitioner by acting as:

- the administrator or administrative receiver of a company;
- the liquidator or provisional liquidator of a company or a foreign company;
- the interim supervisor under a proposal for an arrangement;
- the supervisor of an arrangement; or
- the bankruptcy trustee of an individual.

### 6. BVI prepares for Fourth Round Mutual Evaluation by CFATF

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The BVI is preparing for the Fourth Round Mutual Evaluation assessment by the Caribbean Financial Action Task Force (**CFATF**), currently scheduled to commence in March 2021.

The assessment will determine how well the BVI complies with the Financial Action Task Force (**FATF**) recommendations, which are a set of standards designed to provide a comprehensive plan against money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. The assessment will also review the effectiveness of the BVI's AML/CFT system.

### 7. Additional AML legislative tool enacted

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Whilst not yet in force, the Asset Seizure and Forfeiture Act, 2020 (the **ASFA**) was gazetted on 28 July 2020 and provides a new Asset Seizure and Forfeiture Management Committee (the **ASF Committee**) with, amongst other things, the role of assisting law enforcement agencies with the seizure or restraint of property in connection with:

- certain designated offences relating to a list of legislation set out in Schedule 1 to ASFA, which include the Proceeds of Criminal Conduct Act, 1997 and the Mutual Legal Assistance Act tax Matters Act, 2003; or
- property which is or may be proceeds of crime.

The ASFA augments the tools available to competent authorities in the BVI to manage property which is seized in the BVI in connection with the relevant offences.

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## 8. BVI makes commitment to public registers

On 22 September 2020, the BVI's Premier and Minister of Finance, Honourable Andrew A. Fahie, made a statement regarding the adoption of public beneficial ownership registers for BVI companies.

The premier committed the BVI to working with the UK Government towards the adoption of such registers, provided that the format is in-line with developing international standards and, in particular, at least as implemented by EU Member States in furtherance of the EU fifth Anti-Money Laundering Directive (AMLD5).

The BVI's Finance Minister will make a further statement regarding the then-current state of play of public beneficial ownership registers following publication of the EU's review of the implementation of AMLD5 by EU Member States, currently scheduled for January 2022.

The Press Release can be found [here](#) and the Premier's full statement can be found [here](#).

## 9. Extension of Global Human Rights Sanctions to the BVI

The UK issued the Global Human Rights Sanctions Regulations, 2020 (the **Sanctions Regulations**) in early July 2020, being the first issue of sanctions by the UK under its autonomous sanctions regime (ie, independent of the EU).

Subject to certain modifications, the Sanctions Regulations were extended to the BVI, by the Global Human Rights Sanctions (Overseas Territories) Order 2020, which came into force on 22 July 2020.

The Sanctions Regulations put sanctions in place to deter and provide accountability for actions amounting to serious violations of an individual's:

- right to life;
- right not to be subjected to torture or cruel, inhuman or degrading punishment; and
- right to be free from slavery, not to be held in servitude or be required to perform forced or compulsory labour.

## CAYMAN UPDATES

### 10. Scope of Private Funds Law expanded

The Private Funds (Amendment) Law, 2020 was gazetted on 7 July 2020 and came into force with immediate effect.

The key change effected by this Amendment Law was to amend the definition of "private fund" under the Private Funds Law, 2020 (as amended, the **PFL**). Please see our Update [here](#) for more detail on this change.

Additional amendments were made to the PFL, namely:

- requiring potential conflicts of interest arising in relation to valuation, safekeeping of fund assets and cash monitoring functions to be managed and monitored (as well as identified and disclosed); and
- removing the power of Cabinet to exempt persons or businesses from the application of the PFL.

For more information regarding the private funds regime in the Cayman Islands, please see our Guide [here](#).

### 11. Expiry of deadline for registration of private funds and limited investor funds

On **7 August 2020**, the transition period expired for registration of:

- closed-ended "private funds" under the PFL; and
- those open-ended fund vehicles, known as "limited investor funds", which had previously been exempted from registration under the Mutual Funds Law (2020 Revision) (as amended, the **MFL**) as the equity interests were held by 15 or fewer investors, a majority of whom had the power to appoint or remove the fund's operator (ie, directors, general partner or trustee).

Private funds and limited investor funds which failed to register with the Cayman Islands Monetary Authority (**CIMA**) during the transition period will be operating in contravention of the PFL or the MFL, as applicable, leading to a risk of investigation by CIMA and subsequent enforcement action.

For advice on whether your fund vehicle(s) need to register under the PFL or the MFL, or for assistance with a registration, please contact your usual Mourant contact or, alternatively, please get in touch with one of the Regulatory Update contacts.

### 12. New Regulatory Policy for Private Funds – Exemption from Valuations

CIMA issued a new Regulatory Policy on 7 September 2020, titled [Exemption from Valuation Requirement for a Private Fund](#).

Under section 16 of the PFL, private funds are required to have asset valuation procedures in place and to conduct asset valuations at least annually. This Regulatory Policy sets out the circumstances in which an exemption from those valuation

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requirements may be granted, together with the criteria which CIMA will use to determine whether an exemption is appropriate in each case.

Exemptions may be absolute or conditional and may be granted in the following circumstances:

- An **absolute exemption** may be granted for up to one year in relation to all valuation requirements, where:
  - a Cayman Islands court has frozen the assets of the fund (note that exemption from valuation will be for the period during which the funds are kept frozen as stipulated by the courts);
  - as part of a mutual legal assistance treaty, there is an agreement by the Cayman Islands to repatriate the proceeds of the private fund.
- A **conditional exemption** may be granted for up to one year in relation to one or more valuation requirements under section 16 of the PFL, where:
  - a fund has not launched but does not wish to be deregistered;
  - a fund has not launched and wishes to be deregistered;
  - a fund is unable to complete a valuation due to events such as bankruptcy proceedings, legal or regulatory enforcement actions related to the fund or to a significant underlying investment position of that fund; or
  - a fund has been placed in compulsory liquidation by order of a court of a competent jurisdiction and CIMA is satisfied with the appointment of the liquidator and the scope of the liquidator's review.

### 13. Economic substance – amendment of 'domestic company' definition

The International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2020 were gazetted on 10 July 2020 and came into force with immediate effect.

These Regulations amended the definition of "domestic company" in the Schedule to the core economic substance legislation, the International Tax Co-operation (Economic Substance) Law (2020 Revision) (the **ES Law**). This amendment clarified that companies referred to in section 9 of the Companies Law (2020 Revision) (ie, companies limited by guarantee) are no longer included within the definition of "domestic company".

The impact of this change is that companies limited by guarantee can no longer rely on the domestic company classification to fall out of scope of the Cayman economic substance regime.

### 14. Version 3.0 of the Economic Substance Guidance published

The Tax Information Authority (**TIA**) published revised Guidance on Economic Substance for Geographically Mobile Activities (version 3.0) on 13 July 2020, replacing version 2.0 of the Guidance issued on 30 April 2019.

Some of the key revisions/updates made to the Guidance are summarised below. Version 3.0 of the Guidance:

- reflects the changes made to the ES Law pursuant to the Regulations described above and, in February 2020, the International Tax Co-operation (Economic Substance) (Amendment) Law, 2020 (see our [Q2 Update](#) for more information);
- contains a new paragraph on circumvention, noting that the TIA will monitor arrangements which appear to be circumvention mechanisms and will investigate cases where a person has entered into any arrangement the main purpose or one of the main purposes of which is to circumvent any obligation under the ES Law;
- confirms that the TIA will regard private funds registered with CIMA pursuant to the Private Funds Law as investment funds for the purposes of the ES Law; and
- contains sector specific guidance in relation to the nine relevant activities.

A copy of Version 3.0 of the Guidance can be found on the website of the Department for International Tax Co-operation (**DITC**) [here](#).

### 15. Economic substance – reporting Regulations

The International Tax Co-operation (Economic Substance) Regulations, 2020 were gazetted on 11 August 2020, stipulating the additional information required by the TIA under section 7(4)(k) of the ES Law. The reporting requirements only apply to Cayman entities which fall in-scope of the Cayman economic substance regime and are required to provide annual reporting to the TIA.

This additional information includes the following:

- the name, address and jurisdiction of tax residence of the relevant entity's immediate parent, ultimate parent and ultimate beneficial owner;
- information regarding persons conducting core income generating activities (**CIGA**) on behalf of the relevant entity;
- information to confirm that the relevant entity monitors and controls the conduct of CIGA by other persons;
- a copy of the relevant entity's financial statements or books of account for the relevant financial year;
- information regarding the number and qualifications of employees conducting CIGA for relevant activities;
- confirmation of the numbers of board meetings held both within and outside of the Cayman Islands; and
- for entities conducting the relevant activity of holding business, confirmation that they have complied with the reduced substance requirements under section 4(5) of the ES Law.

### 16. Changes to the companies register

In our [Q3 Update](#), we noted that recent amendments to the Companies Law (2020 Revision), which were not then in force, would require additional information to be recorded on the register of companies maintained by the Registrar and for such

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register to be open to inspection by any person on payment of a US\$61 fee.

These amendments will come fully into force on 1 October 2020 and the register of companies will be available for inspection from that date. The additional information recorded in the register will list the nature of the business and the date of the company's financial year end.

The Registrar is similarly required to make certain information from a Cayman limited liability company's (LLC) registration statement available for inspection by the public with effect from 1 October 2020, again upon payment of a US\$61 fee. The additional information now recorded in an LLC's registration statement will include:

- o the names and addresses of the LLC's members at the time of formation;
- o the nature of the LLC's business; and
- o the date LLC's financial year end.

Companies and LLCs will now also be required to state the nature of the business in their annual returns.

For full details of all of the information available for public inspection, please see our Update [here](#).

## 17. July 2020 legislative changes

A number of core statutes were amended in early July 2020. These amendments are summarised below.

- **Companies Management Law:** The Companies Management (Amendment) Law, 2020 amended the Companies Management Law (2018 Revision), as amended, by:
  - o adjusting references to the list of equivalent jurisdictions published by the Anti-Money Laundering Steering Group to jurisdictions designated as having measures for combating money laundering and financing of terrorism equivalent to those of the Cayman Islands in accordance with section 5(2) of the Proceeds of Crime Law (2020 Revision);
  - o aligning the powers of CIMA with other regulatory laws; and
  - o empowering CIMA to impose administrative fines in certain circumstances.
- **Mutual Funds Law:** The Mutual Funds (Amendment) (No.3) Law, 2020 tidied-up the definition of "regulated mutual fund" to reflect changes made to the mutual fund regulatory regimes in Cayman in 2020.
- **Exempted Limited Partnership Law:** The Exempted Limited Partnership (Amendment) Law, 2020 amended the Exempted Limited Partnership Law (2018 Revision) to permit the de-registration (with CIMA's consent) of an exempted limited partnership registered under the PFL.

## 18. Role of Tax Information Authority expanded

The Tax Information Authority (Amendment) Law, 2020 was gazetted on 7 July 2020 and came into force with immediate effect.

This Amendment Law amended the Tax Information Authority Law (2017 Revision) (as amended, the **TIA Law**) by providing the TIA with additional functions, including the following:

- monitoring compliance with the TIA Law;
- enforcing the TIA Law and investigating a person where there is reasonable belief that the person is or has been in breach;
- examining, by way of scrutiny of returns, on-site inspections or audit reports, the affairs or business of any person; and
- entering into memoranda of understanding or other arrangements with any Government department or agency, competent authority, regulatory body or supervisory body as the TIA considers appropriate for the discharge or performance of its responsibilities and functions.

A new provision was also inserted into the TIA Law, making it an offence to knowingly or wilfully supply false or misleading information to the TIA, punishable on conviction by a fine of US\$12,195 and/or 5 years' imprisonment.

## 19. Beneficial Ownership Regulations amended

The Beneficial Ownership (Companies) Regulations (2019 Revision) were amended in late July by the Beneficial Ownership (Companies) (Amendment) Regulations, 2020 (the **Amendment Regulations**).

The Amendment Regulations (amongst other things):

- Clarify that an "enquiries pending" entry within a company's beneficial ownership register which exists for an uninterrupted period of 3 months or more will constitute *prima facie* evidence of a breach of section 253(1) of the Companies Law (allowing the Registrar to impose an administrative fine under Part XVIIIB (Administrative fines) of the Companies Law).
- Provide a procedure by which the Registrar may impose an administrative fine under Part XVIIIB (Administrative fines) of the Companies Law. To do so, the Registrar is required to issue an administrative fine notice detailing the following prescribed information:
  - o the date of issue of the notice;
  - o the breach for which the fine is being imposed and details of that breach;
  - o the amount of the fine;
  - o how payment should be made;
  - o the date by which the fine should be paid;
  - o the effect of non-payment; and
  - o the appeal process.
- Provide an appeal procedure, whereby a review committee may be appointed by the competent authority (the Minister for Financial Services), which is required to consider an application for appeal and either affirm or set aside the original fine decision.

Analogous changes have been made to the Beneficial Ownership (Limited Liability Companies) Regulations (2019 Revision).

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## 20. CIMA revises Rule and Statement of Guidance on cybersecurity

Revised versions of the following were gazetted in late May 2020:

- Rule - Cybersecurity for Regulated Entities; and
- Statement of Guidance – Cybersecurity for Regulated Entities,

both of which will take effect on 27 November 2020 and are available on CIMA's website [here](#).

Neither the Rule nor the Statement of Guidance apply to regulated mutual funds or to registered private funds.

For those regulated entities which are in-scope, including registered persons under the Securities Investment Business Law, the Rule requires the establishment, implementation and maintenance of a documented cybersecurity framework which is designed to:

- identify, quantify, report and control cybersecurity risks; and
- allow an entity to respond to and recover from any cybersecurity breaches which may materially impact its operations.

Of particular note is the requirement to notify CIMA within 72 hours after the discovery by a regulated entity of a cybersecurity incident deemed to have, or be capable of having, a material impact.

## 21. Extension of Global Human Rights Sanctions to the Cayman Islands

The UK issued the Global Human Rights Sanctions Regulations, 2020 (the **Sanctions Regulations**) in early July 2020, being the first issue of sanctions by the UK under its autonomous sanctions regime (ie, independent of the EU).

Subject to certain modifications, the Sanctions Regulations were extended to the Cayman Islands, by the Global Human Rights Sanctions (Overseas Territories) Order 2020, which came into force on 22 July 2020.

The Sanctions Regulations put sanctions in place to deter and provide accountability for actions amounting to serious violations of an individual's:

- right to life;
- right not to be subjected to torture or cruel, inhuman or degrading punishment; and
- right to be free from slavery, not to be held in servitude or be required to perform forced or compulsory labour.

The Financial Reporting Authority issued a public notice containing more information regarding the Global Human Rights Sanctions regime, which can be found on their website [here](#).

## 22. Single family offices - amendment of Securities Investment Business Law

The Securities Investment Business Law (2020 Revision) (as amended, **SIBL**) was amended on 20 August 2020 to:

- remove a single family office conducting securities investment business from the list of 'non-registrable persons' under Schedule 2A of SIBL; and
- delete Schedule 4A, which set out connected persons within a single family for the purposes of the definition of "single family".

## 23. Reminder - country risk assessments from 5 August 2020

It should be noted that, with effect from 5 August 2020, reliance on the Anti Money Laundering Steering Group (**AMLSG**) list of jurisdictions with equivalent AML/CFT legislation will no longer be possible when risk-assessing customers, investors or investments. In addition, regulated entities, including investment funds, considering engaging non-Cayman service providers must specifically consider country risk prior to entering into the outsourcing arrangement.

We have created a country risk assessment solution for those persons relying heavily on the AMLSG list to conduct client due diligence or risk assessments in practice. Please contact us for more information in this regard.

## 24. CIMA Rules on segregation of assets for mutual funds and private funds amended

The CIMA Rules on segregation of assets for both regulated mutual funds and registered private funds were amended on 10 September 2020. The key premise behind both Rules is that all financial assets and liabilities of a fund must be segregated and accounted for separately from any assets of any of its service providers.

The recent amendments clarify that the transfer and reuse of assets as consented to by a fund does not constitute the financing of a service provider's or a custodian's own operations, provided that a description of these arrangements entered into with any service provider or custodian is disclosed in the offering document or otherwise disclosed to investors before they invest, and that any relevant material changes are also disclosed to investors. This clarification was of critical importance in the context of prime brokerage arrangements for hedge funds.

For a summary of both Rules and further details on all recent amendments, please see our Update [here](#).