

A low-angle, upward-looking photograph of several skyscrapers. The left side of the image is a solid red color, while the right side is white. A flagpole with a flag is positioned vertically in the center, extending from the bottom to the top. The flag is partially visible, showing a dark and light pattern. The skyscrapers are made of glass and steel, with their grid-like structures converging towards the top of the frame.

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# Regulatory Update

Caribbean – Q1 2021

## BVI UPDATES

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### 1. ITA access to economic substance information

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The Beneficial Ownership Secure Search System (Access and Disclosure) Regulations, 2020 were gazetted on 15 October 2020. These Regulations permit the International Tax Authority (ITA) to access economic substance information on the Beneficial Ownership Secure Search (BOSS) system for the purposes of:

- enforcing and monitoring obligations placed on corporate and legal entities by the Economic Substance (Companies and Limited Partnerships) Act, 2018; and
- disclosing information held on registered agent databases to the persons (ie, relevant overseas competent authorities), in the circumstances and on the terms set out in the economic substance requirements under Schedule 4 of the Beneficial Ownership Secure Search System Act, 2017, including where an entity is in breach of the applicable economic substance requirements and where an entity claims to be tax resident outside the BVI.

### 2. BOSS annual fees suspended for small corporate service providers

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On 19 October 2020, BVI Finance issued a notice regarding the agreement of the Premier and Minister of Finance, the Hon. Andrew A Fahie, to the temporary suspension of the 2020 annual fees payable under the Beneficial Ownership Secure Search System (Fees) Regulations, 2019. The suspension related to the 2020 annual fees payable by small corporate service providers with no more than 1,250 registered companies.

### 3. GIFCS report on compliance with its standard on the regulation of TCSP's in the BVI

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In November 2019, the BVI Financial Services Commission (FSC) was assessed by the Group of International Finance Centre Supervisors (GIFCS) against its Standard on the Regulation of Trust and Corporate Service Providers (TCSPs).

The BVI is the third jurisdiction to be assessed under the Standard, which is a benchmark for establishing regulatory frameworks and supervisory practices for the robust oversight of trust and corporate service providers. The BVI received the top two available ratings in 70% of the areas assessed. The FSC is now engaged in diligently addressing areas for improvement identified in the report.

### 4. BVI financial account reporting system (BVIFARs) update

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On 29 December 2020, the ITA issued a notice informing all reporting entities and constituent entities that the version 1.0 schema will only be available on the BVIFARs for reporting obligations until 13 January 2021. Any reporting after that date must be submitted in accordance with the version 2.0 schema.

BVIFARs will undergo configuration for the version 2.0 schema from 16 January to 5 February 2021.

### 5. Temporary extension of company name reservations

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The Registry of Corporate Affairs (the **Registry**) has provided a temporary extension to facilitate new company incorporations expected in January. All company names reserved at the Registry during the period of 21 December 2020 to 22 January 2021 will remain reserved until 12 February 2021.

### 6. Financial Services Sector Money Laundering Risk Assessment 2020

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The FSC has announced the publication of the Virgin Islands Financial Services Sector Money Laundering Risk Assessment 2020. The Assessment identifies and analyses the BVI's current money laundering risks within the banking, financing, money services, insurance, investment, insolvency and trust and company services provider sectors. The FSC has taken steps to address any issues identified within the report.

Licensed entities are encouraged to use the information in the report when carrying out their own risk assessments. The report can be found in the dedicated [AML section](#) of the FSC's website.

### 7. Annual fees due

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The FSC has published a reminder of the following deadlines

- **31 January 2021:**
  - **annual licence fees due** - banks, trust companies, company management licensees, financing and money services business licensees and authorised custodians.
  - **prudential returns due** - banks, trust companies, company management licensees, money services business licensees.
  - **large exposure reports due** – banks.
- **28 February 2021:**
  - **annual licence fees due** - all insurance licensees.



## UPDATES FOR OVERSEAS TERRITORIES

### 8. International sanctions post-Brexit

Following the UK's departure from the European Union (EU) on 31 December 2020, the UK will no longer apply EU sanctions regulations and all sanctions regimes will be implemented through UK regulations. As British Overseas Territories (BOTs), the implementation of the sanctions regime through UK regulations is effectively applied to both the BVI and the Cayman Islands.

H.M. Treasury's Office of Financial Sanctions Implementation (OFSI) has published a [blog](#) providing further information.

### 9. Publicly accessible registers of beneficial ownership

In December 2020, the United Kingdom Government published a draft Order in Council setting out the minimum requirements for publicly accessible registers of company beneficial ownership in the BOTs, together with an accompanying [explanatory note](#). The note sets out the main provisions in the draft Order in Council, the progress the BOTs have made in combatting illicit finance flows and improving transparency in their jurisdictions, and the next steps.

In light of the firm commitments from BOTs to adopt publicly accessible registers, the UK Government has decided that it is not necessary to make the Order in Council at this time, but will keep the position under review.

The BVI Government's statement in relation to the Draft Order in Council can be found [here](#).

The Cayman Islands Government's statement in relation to the Draft Order in Council can be found [here](#).

## CAYMAN UPDATES

### 10. Cayman removed from the EU list of non-cooperative jurisdictions for tax purposes

On 6 October 2020, the Cayman Islands was removed from its brief inclusion on the EU's list of non-cooperative jurisdictions for tax purposes. This reflects the comprehensive legislative changes made by the Cayman Islands in early 2020 to bolster its AML and funds regulatory frameworks. See our [update](#) for further details.

### 11. DITC portal online

The Department for International Tax Cooperation (DITC) launched its new DITC Portal in early November 2020. The [DITC Portal User Guide](#) was issued at the same time. The DITC Portal is currently only open for CRS/FATCA purposes and registrations of outsource service providers (OSPs) for economic substance (ES) purposes.

The OSP registration form must be filed by the OSP before any ES return which claims outsourcing of core income generating activities (CIGA). Otherwise, the outsourcing claim cannot be considered when assessing whether that entity has satisfied the applicable ES test. OSPs who only provide services to pure equity holding companies are not required to register.

Functionality for the ES return and the form for an entity tax resident in another jurisdiction is expected to be added to the DITC Portal in late January 2021. Bulk upload reporting for ES filings will not be available for this reporting cycle. A bulk upload option for entities carrying on holding company business is expected to be added later this year.

Please see our guide [Economic Substance in the Cayman Islands](#) for an overview.

### 12. CRS updates

Updated [CRS Guidelines](#) were published on 6 November 2020.

The CRS XML Schema Version 1.0 and CRS User Guide Version 2.0, which were applicable for all submissions up to the reporting deadline of 16 December 2020, will now transition to the new version of the OECD's CRS XML Schema Version 2.0 and CRS User Guide Version 3.0. The DITC has confirmed that the changes are relatively minor and will provide a summary in January 2021.

Financial Institutions (FIs) who were unable to submit CRS reporting by the 16 December 2020 deadline will not automatically be issued an administrative penalty but will be required to submit their reporting using Version 2.0 of the Schema.

In order to allow for the Schema update, CRS reporting functionality on the DITC Portal has been disabled and is expected to reopen in March 2021. Users are still able to register new FIs, complete AP/PPoC/secondary user updates, and submit CRS compliance forms and FATCA reporting.

See our [CRS and FATCA update](#) for more information.

## 13. CRS compliance forms – reporting deadline

The reporting deadline for filing CRS compliance forms in respect of the 2019 reporting period has been extended to **15 September 2021**.

A CRS compliance form must be completed annually by Reporting FIs and by Trustee Documented Trusts in respect of the same reporting period as their CRS annual returns. For periods following the 2019 reporting period, the annual reporting deadline for FIs to submit the CRS compliance form is 15 September. The deadlines for the 2019 CRS Compliance Form and the 2020 CRS Compliance Form are therefore now the same.

## 14. AML Regulations amended

The Anti-Money Laundering Regulations (2020 Revision) (as amended, the **AMLRs**) were further amended in November 2020 by the Anti-Money Laundering (Amendment) (No. 3) Regulations, 2020.

Regulation 36(2) of the AMLRs was amended to require that transfers of funds must be accompanied by the following information on the payer:

- the payer's name;
- the payer's account number or, where that is not available, a unique identifier which allows the transaction to be traced back to the payer; and
- one of the following:
  - the payer's address;
  - the number of a Government-issued identification document for the payer;
  - the payer's customer identification number; or
  - the payer's date and place of birth.

## 15. Introduction of quarterly reporting requirements for money services businesses

The Anti-Money Laundering (Money Services Business Threshold Reporting) Regulations, 2020 were gazetted on 12 November 2020, introducing a new reporting requirement for money services businesses.

These Regulations require a money services business to provide the Financial Reporting Authority with a quarterly report of transactions, including threshold transactions, carried out by that business in each calendar month. A **threshold transaction** is one involving a transfer of funds, into or out of the Cayman Islands, where the total transferred exceeds US\$3,500, whether in a single transaction or multiple transactions by the same sender or receiver within the same month.

The Regulations set out the information to be contained within the report, which includes:

- the aggregate number and value of transactions for each month in the reporting quarter;
- the largest single transaction for each month in the reporting quarter;

- the total values transferred to and from another country for each month in the reporting quarter; and
- additional details for threshold transactions.

Failure to submit a money services business report in accordance with the Regulations is an offence, leading to a fine of US\$6,098 on summary conviction.

## 16. CIMA Statement of Guidance on Non-Fund Arrangements

CIMA have published a **Statement of Guidance: Non-Fund Arrangements** to provide guidance on assessing whether arrangements meet the definition of a "non-fund arrangement" under the Schedule to the Private Funds Act, 2020, and are therefore not required to register as a private fund under that statute.

## 17. Economic substance notifications

Entities are now able to submit ES notifications, for the financial year commencing in 2020, as a prerequisite to filing an annual return.

It is also possible to submit ES notifications for the financial year commencing in 2021. This is to allow for entities who wish to file their ES notification in advance of dissolving or winding up during that financial year.

The DITC have highlighted in their **ES - Practice Points**, that ES notifications for the financial year commencing in 2019 will remain available until **31 January 2021**.

## 18. Economic substance reporting deadlines extended

Reporting deadlines for Cayman ES have been further extended, for the first year only, as follows:

Period End Date (for ES Return purposes)	ES Obligation	New Deadline
31 December 2019 – 30 April 2020	ES return - all (except IP business)	<b>30 April 2021</b>
1 May 2020 – onwards	ES returns	12 months after the period end date
31 December 2019 – 29 February 2020	ES Return - IP business and tax resident overseas	<b>28 February 2021</b>
1 March 2020 - onwards	ES Return - IP business and tax resident overseas	12 months after the period end date

As noted above, functionality for the ES return is expected to be added to the DITC Portal in late January 2021. However, the DITC has published sample reporting forms together with notes on the ES Legislation & Resources page of its website, [here](#).

## 19. Country-by-Country Reporting (CbCR) updates

The [CbCR Guidelines](#) were updated on 17 December 2020.

The CbCR Portal reopened on 5 January 2021 to permit reporting entities to make a CbCR notification in respect of their constituent entities and to permit reporting entities resident in the Cayman Islands to make a CbC Report. The deadline for submitting notifications and reports for all entities has been extended to **28 February 2021**.

## 20. Virtual asset service providers regime

The legislative framework for the virtual asset service providers (VASPs) regime came partially into force on 31 October 2020, with requirements in place for AML/CFT compliance, supervision and enforcement. The second phase of implementation of the legislation, which will include licensing requirements and prudential supervision, is expected to come into force in June 2021.

The Cayman Islands Monetary Authority (CIMA) has issued a [Supervisory Circular](#) reminding current VASPs and new entrants that they are required to notify and register with CIMA by **31 January 2021**. Failure to do so, may result in enforcement measures being taken by CIMA.

The [FAQs](#) on VASPs, provided by the Ministry of Financial Services, were updated on 12 November 2020.

Please see our update, [The Cayman Islands virtual asset service providers regime](#), for further detail.

The Ministry of Financial Services also issued an industry advisory on 17 November 2020, confirming that the 'travel rule' is not applicable for phase one of the VASP regime. The 'travel rule' is a set of requirements adopted by the FATF which imposes certain obligations on VASPs when transferring virtual assets on behalf of another person or entity. See the [FAQs](#) for more information.

## 21. Administrative fine regime amendments

The Monetary Authority (Administrative Fines) Regulations (2019 Revision) have been amended to insert additional offences under the following laws into the list of prescribed provisions and breach categories under the administrative fines regime:

- from 31 January 2021 – offences under the Virtual Asset (Service Providers) Act, 2020; and
- from 28 October 2020 – further offences under the following laws:
  - Companies Management Act (2021 Revision)
  - Cooperative Societies Act (2020 Revision)
  - Development Bank Act (2018 Revision).

## 22. Legislative Assembly converted to Parliament

Pursuant to changes made to the Cayman Islands Constitution, the Legislative Assembly became a Parliament on 4 December 2020, with the result that all Cayman laws became Acts of Parliament. This includes all previously enacted laws and any references to primary laws in subsidiary legislation.

It should also be noted that consolidated 2021 revisions of Cayman laws, which have had several recent amendments, have started to be gazetted. These include the Companies Act (2021 Revision) and the Companies Management Act (2021 Revision).

## 23. LLP legislation comes into operation

The limited liability partnership (LLP) regime came into effect on 1 December 2020, with all amendments to the Limited Liability Partnership Act, 2017, and supporting regulations relating to beneficial ownership and fees, coming into force.

LLPs may now be registered and conduct business activity within the jurisdiction. The LLP is the Cayman Islands' latest business vehicle and designed to be an alternative business structure to companies and general partnerships. It is also likely to prove popular with local professional services firms.

A procedural manual, published by the Cayman Islands General Registry, to assist with LLP registration is available [here](#).

## 24. Virtual witnessing of deeds

The Property (Miscellaneous Provisions) (Amendment) Act, 2020 came into force on 7 January 2021, permitting the virtual witnessing and attestation of signatures for the execution of a deed or instrument under seal until 16 April 2022.

This Amendment Act provides that where a deed or instrument is signed in the virtual presence of a witness:

- the witness must be able to view the remote signing of the deed or instrument contemporaneously; and
- where not personally known to the witness, the individual signing the deed or instrument must contemporaneously present a valid photo ID to the witness.

## 25. Special economic zone changes

The Special Economic Zones (Amendment) Act, 2020 came into force on 7 January 2021, providing AML/CFT requirements for special economic zone (SEZ) enterprises. In particular, it empowers the Special Economic Zone Authority (SEZA):

- to share any information required for AML, CFT or counter proliferation financing purposes;
- to require an SEZ enterprise to notify the SEZA of any material change to its business activities, controllers, directors or shareholders within 21 days;
- to require an SEZ enterprise to file an annual return;
- to use enhanced investigative powers to examine annual returns and other documents to ensure compliance with trade certificates and the Act;
- to impose conditions on SEZ enterprises where an enterprise has acted in a manner detrimental to the public interest or contravened its trade certificate, the Act or Regulations;

# Quick Fire Updates

- to refuse the grant of a trade certificate where it is not in the public interest (including where it presents a high level of reputational risk for the jurisdiction) or where the applicant is or has a controller, beneficial owner, director, senior officer or shareholder that is not a fit and proper person; and
- to revoke or suspend a trade certificate where the SEZ enterprise fails to comply with conditions and requirements.

This Amendment Act also enables Cabinet to make Regulations to prescribe administrative fines to be imposed by the SEZA and provide for the form of the annual return.

## 26. Regulatory podcast

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If you have questions relating to any of the topics discussed in this update, please email [regulatorypodcasts@mourant.com](mailto:regulatorypodcasts@mourant.com).

Sara Galletly, Head of the Mourant Caribbean Regulatory practice and Partner in our Cayman Islands office, will discuss those questions, as well as the current regulatory landscape, in a podcast which will be uploaded to our website in February 2021.

# Quick Fire Updates