



Regulatory Update

Caribbean – Q4 2021

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Quick Fire Updates

BVI UPDATES

1. Further changes to the BVI's AML regime

The [Q3 Regulatory Update](#) provided brief details regarding the first phase of new legislation enacted in July 2021 in order to strengthen the BVI's anti-money laundering (AML), combatting the financing of terrorism (CFT) and counter proliferation financing (CPF) regime.

The second phase of AML/CFT/CPF legislation, consisting of the following statutes, was gazetted on 22 July 2021 and came into force on **13 August 2021**:

- Counter-Terrorism Act, 2021
- Criminal Justice (International Cooperation) (Amendment) Act, 2021
- Financial Investigation Agency (Amendment) Act, 2021

Counter-Terrorism Act, 2021

The new Counter-Terrorism Act, 2021 criminalises terrorism and the financing of terrorism, makes provision for the detection, prevention, prosecution and conviction of terrorist activities within the BVI and gives effect to several International Conventions and Resolutions for the countering of terrorism and terrorist financing.

The Act creates terrorist offences for, amongst others:

- the financing of terrorism;
- dealing with property derived or generated from a designated terrorist entity;
- making property or financial related services available to terrorist designated entities;
- arranging for property to be used for terrorist purposes; and
- failing to disclose information about acts of terrorism.

Notably, if an offence by a body corporate is committed with the consent or the connivance of an officer¹ of that body corporate or attributable to any act or default on their part, the officer as well as the body corporate is guilty of an offence and will be liable to be proceeded against and punished accordingly.

The Act places a duty on a person to report suspicious activities and transactions which may relate to property owned or controlled by designated terrorist entities. A person who knows or suspects, or has reasonable grounds for knowledge or suspicion, through the course of their trade, profession, business or employment that a person is engaged in the financing of terrorism or seeking to engage in a terrorist act, must report that information as soon as reasonably practicable to the Financial Investigation Agency (FIA). There is also a related tipping off offence.

The Act provides for exchange and mutual legal assistance in criminal matters in relation to terrorist groups or acts and empowers the Commissioner of Police to make account monitoring orders for the purposes of a terrorist investigation.

Criminal Justice (International Cooperation) (Amendment) Act, 2021

The Criminal Justice (International Cooperation) Act, 1993 has been amended to give statutory recognition to the Council of Competent Authorities (which includes the Governor's Office, Attorney General, FIA, International Tax Authority (ITA) and Financial Services Commission (FSC)). The Attorney General is the appropriate competent authority under this Act, with the Governor serving as the conduit for requests.

Financial Investigation Agency (Amendment) Act, 2021

The Financial Investigation Agency Act, 2003 has been amended to enhance the FIA's supervisory powers in relation to financial institutions (FIs), designated non-financial businesses and professions (DNFBPs) and non-profit organisations (NPOs) which are considered to pose money laundering, terrorist financing or proliferation financing risks. It also empowers the FIA to better execute its mandate through the process of requesting relevant documents and information, examining persons under oath, issuing necessary directives, taking enforcement action as considered necessary and compounding an offence instead of taking the route of prosecution before the courts.

The FSC's [July Newsletter](#) contains a useful reminder of the recent AML/CFT/CPF legislation adopted in the BVI, as well as other trusts legislation and financial services legislation, as further described in our [Q3 Regulatory Update](#).

2. Asset Seizure and Forfeiture Act, 2020

The Asset Seizure and Forfeiture Act, 2020 came into force in the BVI on **6 October 2021**.

The Act provides for the management of property seized in connection with designated offences, the disposition of such property and the sharing of the proceeds. The Minister for Finance will be responsible for the custody and management of property forfeited to the Crown until the property is fully disposed of. Every person who has control of any property that is subject to a management order under the Act is required, as soon as practicable, to transfer the control of the property to the Asset Seizure and Forfeiture Management Committee, unless it is needed as evidence or for the purposes of an investigation.

Designated offences under Schedule 1 to the Act include, amongst others, offences under the following enactments:

¹ **Officer** is defined widely, meaning any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in such capacity.

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- Criminal Code, 1997
- Criminal Justice (International Cooperation) Act, 1993
- Customs Duties and Management Act, 2010
- Drug (Prevention and Misuse) Act, 1991
- Drug Trafficking Offences Act, 1992
- Financial Investigation Agency Act, 2003
- Mutual Legal Assistance Tax Matters Act, 2003
- Mutual Legal Assistance (USA) Act, 1990
- Proceeds of Criminal Conduct Act, 1997
- The Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002
- The Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order, 2011

3. US tax identification number mandatory for FATCA reporting

On 20 September 2021, the ITA released a [Notice](#) informing all FIs with FATCA reporting obligations that US tax identification number (TIN) information is mandatory for all reportable accounts and must be included in FATCA reports.

This requirement is applicable for the 2020 reporting period onwards. Those FIs who have submitted filings for the 2020 reporting period without the mandatory TIN information, and who have not been contacted by the ITA in this regard, are requested to send notification to the TIA in accordance with instructions set out in the Notice.

4. Limited partnerships restricted names notice

On 12 August 2021, the [Limited Partnership \(Restricted Limited Partnership Names\) Notice, 2021](#) was gazetted. This Notice prevents the registration of limited partnerships without the FSC's approval where the proposed name of the limited partnership contains a restricted word or phrase. The Notice includes a comprehensive schedule setting out the restricted words and phrases, many of which relate to regulated activities requiring a license or registration, such as 'Asset Management', 'Bank', 'Fund' and 'Insurer'.

5. FSC publishes Investment Business Sector report

On 13 September 2021, the FSC released the [Investment Business Sector Report 2020-2021](#). This report is aimed at identifying areas of risk based upon findings related to the current compliance of licensees under the Securities and Investment Business Act, 2010 with the BVI's Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (as amended, the [AMLTF Code of Practice](#)) and other relevant legislation.

The report is based upon inspections conducted by the FSC as part of its Onsite Compliance Inspection regime.

The findings identified some common themes among the practices of the licensees inspected, noting that whilst there was a high level

of compliance with the obligations to conduct risk assessments under section 12 of the AMLTF Code of Practice, deficiencies were noted in relation to the obligation to update customer due diligence information under section 21 of the AMLTF Code of Practice.

6. Q2 2021 BVI FSC Statistical Bulletin

On 13 September 2021, the FSC released the Q2 2021 Quarterly Statistical Bulletin. The Bulletin can be accessed [here](#).

Of note is the statistic that there were 9,114 company incorporations/registrations in the BVI in Q2 2021, as compared to 7,732 in Q1 2021 and 4,725 in Q2 2020.

7. Mourant Guides and Updates

Mourant Ozannes has uploaded some new Updates and updated Guides to our website, as follows:

- [BVI beneficial ownership legislation](#)
- [BVI economic substance legislation](#)
- [BVI electronic transactions legislation](#)
- [BVI data protection: A practical update for funds](#)
- [Closed-ended private investment funds - a comparison \(BVI and Cayman\)](#)
- [The SPACs renaissance and the offshore advantage](#)

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CAYMAN UPDATES

8. Related Fund Entity filings for private funds

On 1 September 2021, the Cayman Islands Monetary Authority (CIMA) issued a [Notice](#) advising industry that a new Related Fund Entity (RFE) form for private funds was available for use via CIMA's Regulatory Enhanced Electronic Forms Submission (REEFS) portal.

Under the Private Funds (Annual Returns) Regulations, 2021, a **related fund entity** in relation to a private fund means an entity established by or on behalf of the fund's promoter which may account for certain regulatory, tax or other structuring needs of one or more groups of persons/investors and which may not itself meet the definition of a "private fund" under Cayman Islands law, and includes:

- a parallel fund (ie, a parallel investment vehicle generally formed to invest and divest in the same investments at the same time as the main private fund);
- an alternative investment vehicle; or
- a co-investment vehicle (ie, a pooled investment vehicle which invests in one or more transactions alongside the private fund).

See our [Update](#) for more information.

9. Deadline for private fund FAR and RFE forms

On 10 September 2021, CIMA issued a [Notice](#) providing a further extension to the deadline for filing the private fund annual return (FAR) and RFE forms.

All private funds with a 2020 or a 2021 financial year end up to 31 March 2021 must submit the FAR and RFE forms by **31 October 2021**. CIMA has confirmed that no further extensions will be granted.

10. Deadline for 2020 economic substance reporting

A relevant entity which is subject to the economic substance (ES) test under Cayman Islands ES legislation must make a return to the Tax Information Authority (TIA) within twelve months after the last day of each financial year of the entity, commencing on or after 1 January 2019.

Those entities which conducted a relevant activity in 2020 and are required to report under the Cayman ES regime will need to consider the timing of filing of the 2020 ES return with the TIA. For example, those entities which are required to report for 2020 and which have the calendar year as their financial year will need to file their 2020 ES return by **31 December 2021**.

11. DITC Updates Bulletin

The Cayman Islands Department for International Tax Cooperation (DITC) released an [Updates Bulletin](#) on 3 September 2021. The Bulletin provided the following updates:

CRS & FATCA reporting

The deadline for submitting 2019 (extended) and 2020 CRS and FATCA reporting of 31 July 2021 has passed. Any FIs which have not completed their reporting (consisting of CRS returns, CRS Filing Declarations and/or FATCA returns) are urged to do so as soon as possible.

The deadline for filing the CRS Compliance Form, of 15 September 2021, has also passed.

Economic substance notifications (ESNs) - partnerships

As noted in the [Q3 Regulatory Update](#), the Cayman Islands economic substance regime was extended on 30 June 2021 to include:

- Cayman Islands partnerships (including limited partnerships), except where the partnership is a local partnership;
- Cayman Islands exempted limited partnerships (ELPs); and
- foreign limited partnerships registered in the Cayman Islands (foreign LPs).

The Bulletin notes that partnerships must now submit ESNs on an annual basis, with the following guidance regarding timing.

- For any partnership that existed **prior to 30 June 2021**, the first ESN that will be required to be submitted will be for the 2022 ESN year. The ESN for the 2022 ESN year will be due by **31 March 2023**.
- For any partnership that came or comes into existence **on or after 30 June 2021**, the first ESN that will be required to be submitted will be determined by the date on which their first financial year commences. For example, if an ELP was formed on 1 July 2021 and its first financial year covers the period from 1 July 2021 to 30 June 2022, the first ESN year will be the 2021 ESN year. The ESN for the 2021 ESN year will be due by **31 March 2022**.

The [ESN Practice Points](#) issued by the DITC on 3 September 2021 were amended at the same time to reflect the above update.

Changes to 2021 ESNs

Some changes will be made to the information collected on the ESNs from 2021 forwards, namely:

- Where an entity claims that it is tax resident outside the Cayman Islands, it will be required to confirm the date of its financial year end on the ESN.

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- Where an entity is an 'investment fund' for the purposes of the economic substance regime but does not itself have a CIMA registration, FI or GIIN number, the entity will be required to respond 'Yes/No' to the following:

'The CIMA, FI and/or GIIN information provided below belongs to another investment fund that directly or indirectly invests or operates through the Entity'.

If 'Yes', the name and jurisdiction of the investment fund must be provided.

12. Cayman licensees – Changes to business plans

CIMA issued a [Supervisory Issues and Information Circular](#) on 16 September 2021, reminding all licensees that:

- licensees shall only carry on business/activities in accordance with the information provided in the entity's licence application and business plan; and
- licensees must seek CIMA's prior written approval for any change to the approved business plan or to the information supplied in the application unless CIMA has agreed that changes only require prior notification.

To provide clarity, the Circular notes that acquisitions, disposals or transfers of business lines, product lines, asset portfolios and/or subsidiaries are generally considered to be changes to a business plan, requiring CIMA's prior approval under the applicable regulatory law.

The application form for a Change in Business Plan is available via CIMA's REEFS portal and a completion guide is available [here](#).

13. Considering a voluntary liquidation in 2021?

If you are considering liquidating any of your Cayman entities, here are some deadlines to bear in mind in order to avoid incurring unnecessary fees for 2022:

- A CIMA-regulated entity (including registered funds) which is being liquidated may be able to apply to CIMA to have its status changed to 'Licence under Termination' or 'Licence under Liquidation'. A complete application must be filed by 31 December 2021 to achieve a reduction in the 2022 annual CIMA fee.
- To avoid payment of the 2022 annual registration/ Government fees for an entity, the liquidator must hold the final general meeting (for a company) or file the final dissolution notice (for an exempted limited partnership) on or before 31 January 2022.

A CIMA-regulated mutual fund must also file an application with CIMA to cancel its licence or registration within (a) 21 days from the date of cessation of business or (b) before 31 December of the year in which the entity ceases to conduct business as a mutual fund.

CIMA may impose an administrative fine entity if this requirement is not adhered to.

For more information regarding voluntary liquidations or the process involved in deregistering or otherwise terminating a regulated fund, please get in touch with your usual Mourant contact or reach out to one of the contacts on the landing page for this Update.

14. Mourant Guides and Updates

Mourant Ozannes has uploaded some new Updates and updated Guides to our website, as follows:

- [Administrative fines: The process and possible responses](#)
- [Cayman Islands exempted companies](#)
- [Cayman Islands limited liability companies](#)
- [Cayman Islands segregated portfolio companies](#)
- [Closed-ended private investment funds - a comparison \(BVI and Cayman\)](#)
- [The director registration and licensing regime in the Cayman Islands](#)
- [What's trending in Cayman funds? Top take aways](#)

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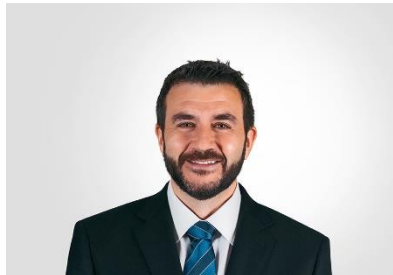
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