

## Changes to the BVI's AML regime

In order to maintain the highest global standards in relation to anti-money laundering, combatting the financing of terrorist and countering proliferation financing (AML/CFT/CPF), the BVI is introducing a new package of legislation to provide a robust framework for AML/CFT/CPF.

### Background

The new AML/CFT/CPF legislative framework is being brought in as part of the extensive preparations for the jurisdiction's onsite Fourth Round Mutual Evaluation assessment by the Caribbean Financial Action Task Force (CFATF) in July 2022. The BVI was deemed 'largely compliant' during the previous Third Round Mutual Evaluation in 2008 which made 40+9 recommendations (last reviewed in 2012). The Fourth Round Evaluation will cover expanded and updated criteria, and for the first time evaluate the effectiveness of the territory's AML/CFT/CPF measures.

### Legislative package

The first phase of legislation, which was passed on 14 June 2021 and is expected to come into force shortly, will include the following:

- Criminal Code (Amendment) Act, 2021;
- Customs Management and Duties (Amendment) Act, 2021;
- Drug Trafficking Offences (Amendment) Act, 2021;
- Proceeds of Criminal Conduct (Amendment) Act, 2021.
- Proliferation Financing (Prohibition) Act, 2021;

It is then anticipated that the following second phase of legislation will be passed later this year:

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

A very brief summary of each is set out below.

### First phase

#### Criminal Code (Amendment) Act, 2021

A new section will be added to the Criminal Code Act, 1997 to create predicate offences in relation to tax crimes, following FATF Recommendations designed to thwart activities relating to the offence of tax evasion. The new offence of intending to defraud the BVI Government will lead to liability on conviction to imprisonment for 10 years or a fine of US\$500,000, or both.

### Customs Management and Duties (Amendment) Act, 2021

The Customs Management and Duties Act, 2010 will be amended to ensure accurate monitoring of goods coming into the BVI, detect illegal goods and strengthen declaration provisions, including requiring the Commissioner of Customs to provide the Financial Investigation Agency (FIA) with information on declarations of cash over US\$10,000, under-declarations of cash and non-declarations of cash.

### Drug Trafficking Offences (Amendment) Act, 2021

The Drug Trafficking Offences Act, 1992 will be amended to establish the FIA as the central body with responsibility for receiving suspicious transactions reports (or **SARs**). An investigating officer or the FIA will be permitted to expand a drug trafficking investigation to establish whether or not a money laundering offence may also have been committed. The circumstances under which a police or customs officer may seize cash will be widened to include where reasonable grounds exist to suspect that the cash is intended to be used in relation to criminal conduct or that it represents the proceeds of criminal conduct.

### Proceeds of Criminal Conduct (Amendment) Act, 2021

The Proceeds of Criminal Conduct Act, 1997 will be amended to enhance procedures to detect money laundering and for ongoing monitoring on a risk-based approach. It reflects changes made to the Drug Trafficking Offences Act, 1992 (described above) in establishing the FIA as the central body with responsibility for receiving SARs and widening the circumstances under which a police or customs officer may seize cash. Related amendments will be made to the Anti-Money Laundering Regulations, 2008 and the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008.

### Proliferation Financing (Prohibition) Act, 2021

The new Proliferation Financing (Prohibition) Act, 2021 is designed to create provisions to prevent the proliferation of weapons of mass destruction and their financing by ensuring the implementation of targeted financial sanctions relating to counter-proliferation resolutions of the United Nations Security Council. The Act empowers the Governor to 'designate' any person or entity where there are reasonable grounds to believe them to be an agent or entity of a 'designated country'. It creates a number of offences relating to knowingly or recklessly dealing with assets related to, or making assets available to, a designated person or entity (with provision for the search, seizure and management of such assets).

The Act also prohibits financial transactions with a designated country's financial institutions, maintaining business operations in a designated country or establishing or maintaining accounts or operations on behalf of a designated country in the BVI. These measures include dealing with or insuring of a flagged vessel of, or leasing or chartering a vessel or aircraft of, or procuring a vessel or crew service from, a designated country.

The countries that are designated under the Act (with power for a review and amendment) are North Korea and Iran. The controlled items related to these designated countries are set out in a schedule to the Act. The Act provides that an application may be made to the Governor for authorisation to conduct specified activities in relation to designated persons and entities, including designated countries.

## Second phase

### Counter Terrorism Act 2021

The new Counter Terrorism Act, 2021 criminalises terrorism and the financing of terrorism, makes provision for the detection, prevention, prosecution, 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 and making property or financial related services available to terrorist designated entities. Notably, if an offence by a body corporate is committed with the consent or the connivance of an officer 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. It 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 will be amended to give statutory recognition to the Council of Competent Authorities (which includes the Governor's Office, Attorney General, FIA, International Tax Authority and Financial Services Commission). The Attorney General will be 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 will be 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.

#### **Next steps**

For further information in relation to the AML/CFT/CPF regime in the BVI, please reach out to your usual contact or one of the contacts below.

## Contacts

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