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Regulatory Update

Caribbean – Q1 2022

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BVI UPDATES

1. Amendment of the BVI's beneficial ownership/economic substance reporting regime

The Beneficial Ownership Secure Search System (Amendment) (No.2) Act, 2021 was gazetted in the BVI on 31 December 2021 and came into force on **1 January 2022**.

The Amendment (No.2) Act made numerous changes to the information required to be reported under the BVI's beneficial ownership and economic substance regimes including, but not limited to, the following:

- From 1 January 2022, limited partnerships without legal personality must report beneficial ownership information within 15 days of identifying those matters.
- The particulars reported in respect of each beneficial owner of a corporate and legal entity (CLE) must include a taxpayer identification number (TIN) or other ID reference number (if any).
- For any CLE which carries on a relevant activity for the purposes of the BVI's economic substance regime, but which claims to be out of scope by reason of being a non-resident company or limited partnership, the reporting requirements now include:
 - a TIN or other identification reference number; and
 - details of the MNE group (for country-by-country reporting purposes), if applicable.
- For those entities required to report under the BVI's economic substance regime, the following additional information must be reported for each applicable financial period:
 - any TIN;
 - the type of mobile income;
 - the amount and type of gross income in relation to each relevant activity conducted;
 - information regarding the nature and value of assets used in the conduct of the relevant activity;
 - information relating to employees and employee numbers, both globally and those engaged in the relevant activity conducted;
 - details of the directors of the CLE, including name, qualifications, experience and physical presence in the BVI; and
 - details of board meetings held throughout the period.
- For those CLEs reporting in relation to the relevant activity of holding business, the reporting must now include:
 - a statement as to whether the holding business conducted is active or passive;
 - if active, details of the employees and premises engaged/used in the relevant activity; and
 - where passive, a statement that the CLE has complied with the applicable statutory obligations.

2. Consolidated legislation

The BVI has published consolidated versions of certain financial services legislation, including the following:

- Banks and Trust Companies Act
- Beneficial Ownership Secure Search System Act
- BVI Business Companies Act
- Company Management Act
- Economic Substance (Companies and Limited Partnerships) Act
- Financial Services Commission Act
- Financing and Money Services Act
- Proceeds of Criminal Conduct Act
- Securities and Investment Business Act

The consolidated legislation can be accessed via the FSC's [website](#) and is consolidated up to **1 January 2020**. Accordingly, any amendment legislation enacted following that date is not reflected within the revised legislation.

3. BVI Financial Services Commission updates

Sectoral risk assessments

The BVI Financial Services Commission (FSC) has, through its newsletters, been highlighting the results of the money laundering (ML) and terrorist financing (TF) risk assessments undertaken in relation to each financial services sector and provide recommendations on how to mitigate the identified risks.

- The [August 2021 Newsletter](#) looked at the ML and TF risks facing the banking sector.
- The [September 2021 Newsletter](#) looked at the ML and TF risks facing the trust and corporate services providers sector.
- The [October 2021 Newsletter](#) looked at the ML and TF risks facing the financing sector.
- The [November 2021 Newsletter](#) looked at the ML and TF risks facing the money services sector.

Recent AML/CFT legislation

In its [August 2021 Newsletter](#), the FSC provided summaries of certain recent legislation, including;

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

The [September 2021 Newsletter](#) highlighted certain key provisions of the Proceeds of Criminal Conduct (Amendment) Act, 2021, which came into force on 9 July 2021.

In its [November 2021 Newsletter](#), the FSC highlighted the Counter-Terrorism Act, 2021, which came into force on 13 August 2021, noting that licensees are advised to familiarise themselves with that Act and all other recent legislative enactments.

Licensees are also encouraged to take account of relevant enactments and sectoral risk assessments when updating their policies and procedures, and to ensure that training is conducted

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accordingly. This should include how these changes impact both client and institutional risk assessments.

The FSC stated its intention to undertake regular evaluations of the implementation of the requirements of the BVI's updated AML/CFT legislation through its onsite and desk-based supervisory models.

For brief details of the recent AML/CFT legislation, see our [Q4 Regulatory Update](#).

[Q3 FSC Statistical Bulletin](#)

The FSC's most recent [Statistical Bulletin](#) was released on 13 September 2021.

4. Financial Investigation Agency notice

In September 2021, the BVI Financial Investigation Agency (the **FIA**) issued a [Public Notice](#) providing that, following the adoption of the Financial Investigation Agency (Amendment) Act, 2021, the FIA can now impose fines for the commission of offences prescribing a fine under the Financial Investigation Agency Act, 2003 (as amended). Such offences include failure to comply with a request to produce documents within the specified time period of 5 working days.

5. Sanctions

In October 2021, the FSC issued a [Public Statement](#) urging the general public, including all persons required to comply with the requirements of the BVI's AML/CFT regime, to note the concerns raised in the 21 October 2021 statements of the Financial Action Task Force (**FATF**) identifying jurisdictions with strategic deficiencies in their AML/CFT regimes.

6. Mourant Guides and Updates

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

- [Cell companies/segregated portfolio companies - a comparison](#)
- [Freezing Orders in the BVI](#)

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7. Key filing dates - 2022

As we enter a new year, Mourant have prepared a useful [Reminder](#) regarding the key 2022 filing dates and requirements. Please contact us for guidance on any filing or compliance obligations.

8. 2022 CIMA deadlines – 15 January 2022

If you have a regulated entity in the Cayman Islands, the deadline for payment of the 2022 fees charged by the Cayman Islands Monetary Authority (CIMA) is **15 January 2022**. Failure to pay any annual fees by this deadline will result in late filing penalty fees being levied.

In addition, entities which are regulated as registered persons under the Securities Investment Business Act (2020 Revision) (as amended, **SIBA**), are required to file a completed Annual Declaration form with CIMA by **15 January** in each year. For more information, please see our [Update](#) here.

9. De-registration of private funds - update

On 1 December 2021, CIMA issued a [Notice](#) advising industry members that the cancellation/de-registration procedures for registered private funds are being revised following industry consultation.

Private funds seeking to de-register should, in the interim, refer to:

- CIMA's [Regulatory Procedure](#) relating to the cancellation of mutual fund registrations; and
- CIMA's [Regulatory Policy](#) on exemption from the audit requirement for a private fund.

10. AML/CFT updates from CIMA

In the December 2021 edition of [The Anchor](#), CIMA highlighted the following requirements for financial service providers (**FSPs**) (including regulated entities):

- FSPs must understand the risks involved in environmental crimes (ie, criminal offences harming the environment, including the illegal extraction of forestry and minerals), take note of the 'red flags' for potential illegal logging, mining and waste trafficking and consider how to incorporate these into their AML/CFT/CPF compliance framework.
- In addition to compliance with targeted financial sanctions on criminal operations undertaking ransomware attacks, FSPs should strengthen their detection and alert systems to prevent and detect against ransomware attacks. This includes:
 - reporting ransomware attacks immediately to law enforcement;
 - filing related suspicious activity reports;

- conducting regular ransomware awareness training with staff; and
- continually reviewing and updating new 'red flag' indicators of ransomware.

11. DITC Updates Bulletin

The Cayman Islands Department for International Tax Cooperation (**DITC**) released an [Updates Bulletin](#) on 19 October 2021. The Updates Bulletin included the following updates:

Compliance update

The DITC noted the following common themes illustrated by their analysis of the data submitted in respect of the 2020 CRS reporting year:

- A high number of financial institutions (**FIs**) failed to submit a 2020 CRS Filing Declaration or 2020 CRS Compliance Form by the applicable deadline. FIs with outstanding filings are advised to submit the same as a matter of urgency.
- A significant number of 2020 CRS Returns did not include certain required information (including a TIN or functional equivalent for individuals, controlling persons and entities and the date of birth for individuals and controlling persons). The DITC encourages FIs to submit a correction where possible and will be contacting FIs where this information was not provided in the CRS Return.

Comparison of AEOI and economic substance data

The DITC noted that it is matching CRS and FATCA notification data submitted against other data sources, such as economic substance notifications, CIMA licences/registrations, General Registry nature of business classifications and the IRS GIIN list. The DITC reminded FIs of the importance of correctly classifying under the CRS and FATCA regimes, noting that FIs may be liable to administrative fines or other sanctions for failure to comply with the applicable regulations.

Key changes to ESNs

The following changes have been made to the form of economic substance notification (**ESN**) to be submitted in respect of the 2021 ESN year and thereafter:

- Where the tax resident outside the Cayman Islands (**TRO**) exemption is claimed, the entity will be required to provide the date of its financial year end on the ESN.
- Where the entity is an 'investment fund' for the purposes of the Cayman economic substance regime, the following will apply:
 - The current question – 'Check this box if the CIMA, FI or GIIN numbers provided below relate to another investment fund that directly invests or operates through the entity' will change to the following mandatory question – 'The CIMA, FI and / or GIIN information provided below belongs to another investment fund that directly or indirectly invests or

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operates through the Entity'. The only responses available will be "Yes" or "No".

- o Where the answer is "Yes", the following new questions are asked:
 - specify name of investment fund; and
 - specify jurisdiction of investment fund.

Economic substance reminders

The DITC highlighted the importance of each entity classifying itself correctly for the purposes of the economic substance regime, noting that an error should be corrected as soon as practicable in accordance with the DITC's [Practice Points document](#).

The DITC also recommends that, where the 'investment fund' exemption is claimed on an ESN, the entity/partnership should provide its CIMA, GIIN and/or FI number(s). If the entity/partnership does not itself have a CIMA, GIIN or FI number but another investment fund that directly or indirectly invests or operates through that entity/partnership does, the entity/partnership should check the relevant box on the ESN and input the CIMA, GIIN and/or FI number of that investment fund.

12. Companies Act amended

The Companies (Amendment) Act, 2021 was gazetted on 16 December 2021, though is not yet in force. This Amendment Act provides for the restructuring of a company under the supervision of a 'restructuring officer' and a stay of proceedings where a company is restructuring, where a provisional liquidator is appointed or where a winding up order is made.

For more information, see our [Update](#) on the introduction of a dedicated restructuring officer and our [Update](#) on the abolition of the 'headcount test' for schemes of arrangement.

13. Beneficial Ownership Enforcement Manual updated

The General Registry, as competent authority for the Cayman Islands' beneficial ownership regime, updated the Beneficial Ownership Enforcement Manual with effect from 26 November 2021.

The changes made to the [Revised Manual](#) include the following:

- *What are Administrative Fines?* - paragraph 1.6 outlines what is a single breach and that single breaches can occur multiple times, in the case where a corporate service provider fails to file information for multiple entities. Failure to file for each entity is a breach.
- *Section four - The Procedure for Imposing a Fine* provides clarity on the investigative process that will be taken prior to a fine being levied. The use of warning notices has been removed.

On 25 October 2021, the General Registry circulated a reminder to industry regarding the obligation to file adequate, accurate and up-to-date beneficial ownership information,

and to file updated information when relevant changes have taken place. This notice also informed industry that over 300 administrative fines were imposed by the General Registry between October 2020 and September 2021 in relation to breaches of the beneficial ownership regime.

14. FATF upgrades Cayman's AML/CFT compliance

On 21 October 2021, the Cayman Islands Government issued a [Press Release](#) noting that the Cayman Islands' technical compliance with the FATF's 40 Recommendations was upgraded in February and October 2021. The FATF's October 2021 [Follow-up Report and Technical Compliance Re-Rating](#) concluded that the Cayman Islands is now rated Compliant or Largely Compliant in relation to all of the 40 Recommendations.

The Press Release also noted that the International Convention for the Suppression of the Financing of Terrorism was extended to the Cayman Islands in August 2021. This Convention requires signatories to criminalise the financing of terrorism, as well as to take measures to identify, detect and freeze assets related to terrorism, and to prosecute terrorism financing offences.

15. Mourant Guides and Updates

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

- [Cayman key filing dates - 2022](#)
- [Cayman Islands to introduce a dedicated 'restructuring officer'](#)
- [Cell companies/segregated portfolio companies - a comparison](#)
- [Top Takeaways: ACAMS 3rd Annual Caribbean Conference](#)
- ['Headcount test' to be abolished for members' schemes of arrangement](#)
- [Filing deadline for the 2022 annual declaration for registered persons](#)

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