

mourant

Regulatory Update

Caribbean – Q2 2022

[mourant.com](https://www.mourant.com)

Quick Fire Updates

BVI UPDATES

1. Industry Circular on Russian sanctions

On 8 March 2022, the BVI Financial Services Commission (FSC) issued an [Industry Circular](#) regarding the sanctions imposed by the UK in response to Russia's actions in Ukraine. The Industry Circular reminds relevant persons in the BVI that where a designation is made under a UK Sanctions Order which has been extended to the BVI (as is the case with The Russia (Sanctions) (EU Exit) Regulations 2019), relevant persons must:

- check whether they maintain any accounts or hold funds/economic resources for a designated person;
- freeze such accounts, funds or other economic resources;
- refrain from dealing with the funds or other assets, or making them available (directly or indirectly) to a designated person unless licensed by the Office of the Governor;
- report to the Officer of the Governor; and
- provide any information concerning frozen assets of designated persons that the Governor's Office may request.

The [Virgin Islands Sanctions Guidelines](#) issued by the Office of the Governor are an important resource in assisting relevant persons to meet their obligations under the BVI financial sanctions regime.

The Industry Circular further states that criminal penalties may apply to any person who does not comply with financial sanctions legislation, or who attempts to circumvent its provisions.

2. Changes to company fees

Schedule 1 to the BVI Business Companies Act, 2004 was amended with effect from **1 February 2022** in order to make changes to certain corporate fees relating to the continuation of companies into and out of the BVI and the fees applicable to foreign companies registered in the BVI, as summarised below:

Continuation fees

Description	Old Fee	New Fee
Continuation of company limited by shares, company limited by guarantee that is authorised to issue shares and unlimited companies, in each case, which are authorised to issue no more than 50,000 shares	US\$1,000	US\$500
Continuation of the above types of company, in each case, which are authorised to issue more than 50,000 shares	US\$1,500	US\$1,300
Continuation of companies limited by guarantee and unlimited companies, in each case, that are not authorised to issue shares	US\$1,000	US\$500
Registration of a notice of continuation out of the BVI	US\$1,100	US\$2,000

Foreign company fees

Description	Old Fee	New Fee
Registration of a company as a foreign company carrying on business in the BVI	US\$400	US\$500
Annual fee of a foreign company registered in the BVI	US\$400	US\$500
Penalty on late payment of annual fee on or before May 31	US\$40	10% of annual fee due
Penalty on late payment of annual fee on or before June 1	US\$200	50% of annual fee due

Details of the fee changes are also provided in the FSC's [Industry Update](#) of 21 January 2022.

3. BVIFars Portal – Annual fee

The BVI's International Tax Authority (ITA) issued a notice on 14 February 2022 informing industry that an annual fee of US\$185 will be introduced in relation to each entity enrolled in the BVIFars Portal with effect from **1 September 2022**.

This annual fee will apply to all entities required to report in the BVI under the CRS, FATCA and Country-by-Country Reporting frameworks.

The CRS and FATCA enrolment and submission deadlines are as follows:

- CRS Annual Enrolment/Notification deadline - 30 April 2022
- CRS Annual Reporting Submission deadline - 31 May 2022
- FATCA Annual Enrolment deadline - 1 April 2022
- FATCA Annual Reporting Submission deadline - 31 May 2022

The ITA also issued two [Industry Notices](#) in February relating to the requirement that all Financial Institutions (FIs) submit mandatory tax identification number (TIN) filings in relation to the 2020 reporting year onwards, and noting that BVIFARS has been updated in this regard.

4. BVI Financial Services Commission updates

In its [January 2022 Newsletter](#), the FSC highlighted the Proliferation Financing (Prohibition) Act, 2021 (the **PFPA**), which came into force on 9 July 2021 and replaced the Proliferation Financing (Prohibition) Act, 2009. Licensees are advised to familiarise themselves with the PFPA and the [Virgin Islands Financial Sanctions Guidelines](#).

In particular, it should be noted that section 34 of the PFPA requires that a person who holds an asset of a designated person or entity must make a report to the Financial Investigation Agency (FIA) as soon as reasonably practicable and, in any event, within 5 working days from the date:

- the person received notice of the designation;
- of publication of the designation; or
- the person became aware that the asset belongs, or is connected to, the designated person or entity.

Quick Fire Updates

In its [February 2022 Newsletter](#), the FSC provided a link to its [Strategic Work Plan](#), which sets out the strategic priorities and initiatives of the FSC for 2022–2024. This newsletter also highlighted the Drug Trafficking offences (Amendment) Act, 2021, noting (amongst other things) that this Amendment Act formally identifies the FIA as the sole institution in the BVI responsible for suspicious transactions/activity reports.

The [March 2022 Newsletter](#) highlighted the following (amongst others):

- The Compliance Inspection Unit of the FSC published its [2022 Thematic Inspection Programme](#) on 29 March 2022, setting out topics to be reviewed, the relevant assessment period and the relevant targeted industry sector(s). Licensees selected for an inspection will be notified at least three weeks in advance.
- The need for industry practitioners to regularly and proactively screen clients and records, including against the UK sanctions list.
- Information regarding the findings of the money laundering and terrorist financing risk assessment relating to the Investment Business sector.

Key dates

The March 2022 Newsletter also highlighted the following upcoming deadlines:

31 March 2022

- Filing of 2021 (Annual) Prudential Return for insurance licensees.
- Submission of Audit Exemption Applications for the period of 1 January 2021 to 31 December 2021.
- Submission of annual licence fee by all Funds and Investment Business Licensees.
- Submission of Investment Business Annual Return for all entities holding an Investment Business licence.
- Filing of 2021 AML/CFT Return (see Item 5 below).

10 April 2022

- For Category A and D Insurers, submission of a list of internal audit reports prepared during Q1, with a summary of the areas covered by each report.

Q4 2021 BVI FSC Statistical Bulletin

The FSC's most recent [Statistical Bulletin](#), which provides statistics, information and analysis on financial services activities for the fourth quarter of 2021, is now available on the FSC's website.

5. 2021 AML/CFT Returns – Filing deadline

On 9 March 2022, the FSC issued a [Press Release](#) reminding BVI licensees that the deadline for submitting AML/CFT Returns for the 2021 reporting period was **31 March 2022**.

Electronic filing of AML/CFT returns is available via the VIRRGIN Returns System, though all users (including previously registered users) must register at <https://amlreturns.bvifsc.vg>. A [step-by-step guide](#) on how to register and file AML/CFT Returns is available.

6. Statement on public beneficial ownership registers

On 11 March 2022, the Honourable Andrew A. Fahie, Premier and Minister of Finance of the BVI made a [Statement](#) which, amongst other things, provided an update regarding the adoption of public beneficial ownership registers for companies. The Statement notes that an industry consultation process would commence in short order.

7. BVI inclusion on EU Annex II

On 24 February 2022, several jurisdictions, including the BVI, were included on the European Union's (EU) state of play document identifying cooperative jurisdictions which have made further improvements to their tax policies or related cooperation ([Annex II](#)). For more details on the BVI's inclusion on Annex II, see our [Update](#).

8. Focus on transparency and accountability legislation

The Government of the Virgin Islands is placing transparency and accountability legislation at the forefront of its agenda for the Fourth Session of the Fourth House of Assembly.

The Speech from the Throne delivered on 18 January 2022 by His Excellency the Governor, Mr John Rankin, CMG noted (amongst other things) the intention to introduce:

- the Freedom of Information Act, to govern the public's access to information held by public authorities; and
- the Proceeds of Criminal Conduct (Amendment) Act, which will seek to amend the Proceeds of Criminal Conduct Act, 1997 to make provisions for unexplained wealth orders.

See the Government's [website](#) for more information.

9. CRS reportable jurisdictions updated

An updated list of reportable jurisdictions for CRS was gazetted on 22 March 2022. The updated list is available [here](#).

Whilst a number of changes have been made to the reportable jurisdictions, the key changes of note are:

- the addition of Hong Kong and Turkey for 2021 exchanges of information ([Eol](#)); and
- the addition of Albania, Ecuador, Grenada and Nigeria for 2022 [Eol](#).

10. Mourant Guides and Updates

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

- [What documents and records must a BVI company keep](#)
- [BVI approved managers regime](#)
- [BVI open-ended funds](#)
- [BVI companies - Directors' duties and liabilities](#)
- [Mergers and acquisitions - A BVI guide](#)
- [Strike off and restoration under the BVI Business Companies Act, 2004](#)

CAYMAN UPDATES

11. 2022 Revisions

In January and February of this year, consolidated 2022 revisions of various Cayman Acts were gazetted including the following revised financial services legislation:

- Beneficial Ownership (Companies) Regulations (2022 Revision)
- Companies Act (2022 Revision)
- Monetary Authority (Administrative Fines) Regulations (2022 Revision)
- Private Fund Regulations (2022 Revision)
- Virtual Asset (Service Providers) Act (2022 Revision)

12. CIMA Notice on Russian sanctions

The Cayman Islands Monetary Authority (CIMA) issued a [Notice](#) on 16 March 2022 relating to targeted financial sanctions against Russia. The Notice reminds financial services providers (FSPs) and virtual asset services providers (VASPs) that breaches of financial sanctions are a serious criminal offence and incur significant penalty.

FSPs and VASPs have a legal obligation to:

- regularly monitor the sanctions applicable to the Cayman Islands, including local designations made by the Governor;
- review their clients against the lists of designated persons or entities and the [Consolidated List of Financial Sanctions Targets in the UK](#) maintained by the [Office of the Financial Sanctions Implementation \(OFSI\)](#);
- freeze any accounts, other funds or economic resources belonging to, owned, held or controlled by designated persons or entities;
- refrain from dealing with funds or assets or making them available to designated persons or entities, unless licensed by the Governor;
- report to the Governor, via the Financial Reporting Authority (FRA), as soon as practicable, if they know or have reasonable cause to suspect that a person is a designated person or has committed an offence under the legislation; and
- disclose to the Governor, via the FRA Compliance Reporting Form, details of any frozen funds or other assets or actions taken in compliance with the prohibition requirements of all applicable sanctions, including attempted transactions.

The Notice also states that FSPs and VASPs must ensure that their sanctions compliance programmes remain fit-for-purpose and contain mechanisms to allow for a quick response to the complex, far-reaching and swift changes to sanctions regimes. Details of all internal investigations undertaken with respect to suspected sanctions breaches or evasion must be formally documented and safely secured. Appropriate ongoing training and guidance should be provided to compliance and front-line staff to assist them in understanding the latest sanctions measures and how to handle affected clients and/or transactions.

FSPs and VASPs are also encouraged to monitor emerging cybersecurity threats to ensure their cybersecurity framework continues to be appropriate to manage the cyber and IT risks.

The Notice reminds FSPs and VASPs that while not all international sanctions are extended to the Cayman Islands, they may still be applicable to an FSP or VASP through their far-reaching extra-territorial effect. For example, FSPs and VASPs should consider the effect of sanctions issued by the [Office of Foreign Assets Control \(OFAC\)](#) of the US Department of Treasury if dealing in US dollar currency or if a US corporation is a part of an ownership structure. Failure to comply with OFAC sanctions can lead to criminal or civil liability in the United States.

The following [FRA resources](#) provide useful guidance in relation to financial sanctions:

- [Public Notice in relation to the Russian Sanctions regime](#)
- [Quick Guide to Financial Sanctions in the Cayman Islands](#)
- [FRA Financial Sanctions Guidance](#)

CIMA also issued a [Financial Sanctions Notice](#) on 24 February 2022 with a useful reminder of the obligations arising both:

- when a person is added to the OFSI Consolidated Sanctions List and assets are frozen; and
- where a person is removed from the Consolidated Sanctions List and assets are unfrozen.

13. Private funds – Updated FAR form

On 16 February 2022, CIMA issued a [Notice](#) advising industry that an updated version of the fund annual return (FAR) form for private funds was scheduled to be released on CIMA's online portal, 'REEFS', by 1 March 2022. The updated FAR form should be used for all financial year ends of 31 December 2021 and thereafter. The related [Private Fund FAR Completion Guide](#) was also updated.

The updated FAR form combines the previous FAR form, together with the related fund entity (RFE) form. Separate FAR and RFE forms may only be filed for financial year end filings up to 30 November 2021.

14. Updated Policy – Private fund audit exemptions

On 12 March 2022, CIMA issued a [Notice](#) providing that the [Regulatory Policy for Exemption from Audit Requirement for a Private Fund](#) had been updated, replacing the previous version dated July 2020.

The key change in the updated Policy is that paragraph 2.2 provides clarification that the Policy does not apply to private funds which have not received capital contributions from investors of the purposes of investment. Such private funds are exempt from Part 3 of the Private Funds Act (2021 Revision), which includes the obligation to be audited and file audited financial statements with CIMA, though a declaration confirming that the fund has not received capital contributions must be filed with CIMA under the Private Funds Regulations (2022 Revision).

Quick Fire Updates

15. VASP update from CIMA

On 4 February 2022, CIMA issued an [Industry Notice](#) providing an update on virtual asset service provider (VASP) registrations and regulatory developments.

In this Notice, CIMA confirmed that the names and status of entities registered under the Virtual Asset (Service Providers) Act (2022 Revision) can be identified using the Search Entities function on CIMA's website. At the date of this Update, 6 virtual asset service providers (VASPs) have been registered by CIMA.

The Notice identifies the most common deficiencies in VASP registration applications, namely:

- incomplete applications;
- insufficient information being provided, including in relation to business plans, organisation structure and insufficient AML/CFT/CPF and cybersecurity policies; and
- inconsistent supporting documentation; for example, where conflicting information is provided in relation to the ownership and customers of the applicant.

The Notice also announced the publication of a proposed 'Rule and Statement of Guidance for the Provision of Virtual Asset Services – Virtual Asset Custodians and Virtual Asset Trading Platforms' for private sector consultation. Documents released by CIMA for consultation can be found [here](#).

16. VASP Travel Rule – Notification obligation

On 22 February 2022, CIMA issued an [Industry Notice](#) advising VASPs that the 'Travel Rule' provisions under the Anti-Money Laundering Regulations (2020 Revision) (as amended, the [AMLRs](#)) would come into effect from **1 July 2022**. The related [Commencement Order](#) was gazetted on 30 March 2022.

VASPs registered with CIMA, as well as those which have submitted VASP registration applications, are required to advise CIMA of how they will comply with the Travel Rule, by submitting details of their compliance arrangements and applicable policies and procedures by **31 March 2022**.

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

17. DITC Updates Bulletin

The Cayman Islands Department for International Tax Cooperation (DITC) has released an [Updates Bulletin](#) dated February 2022, which includes the following updates:

Economic substance (ES)

- ES forms for entities tax resident overseas ([TRO Forms](#)) are now being accepted for successive reporting periods (ie a financial year following a financial year in respect of which a TRO Form has already been submitted). The submission deadline for TRO Forms is 12 months from the last date of the period being reported on.
- The ES Return is in the process of being updated to allow for reporting by general partnerships, limited partnerships, exempted limited partnerships and foreign limited

partnerships. The updated ES Return is expected to be added to the DITC Portal in **Q1 2022**.

FI deactivations

- The DITC Portal now has functionality to deactivate a Financial Institution (FI) where the entity has ceased to exist or is otherwise no longer a Cayman Reporting FI and the DITC Portal User Guide has been updated accordingly.
- All CRS reporting obligations must be completed before the Principal Point of Contact (PPoC) submits a deactivation request and evidence to support the claim must be included (eg Certificate of Dissolution/Strike-Off, trust deed indicating the date of termination or directors' resolution to terminate a cell of an SPC).
- Applications for an entity to no longer be considered a Cayman Reporting FI must include a letter explaining the reasons why the entity was initially classified as an FI but is no longer an FI, and indicate how the entity should now be classified (ie Passive or Active NFE for CRS), together with evidence supporting the claim (eg self-certification forms).
- When submitting an FI deactivation request, the PPoC must provide contact details for the person who will retain the FI's records for 6 years following the date of deactivation.
- FIs in liquidation do not cease to be classified as a Cayman Reporting FI for the sole reason of being in liquidation; liquidators must ensure that the FI continues to satisfy all obligations under Part 2 of the Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations (2021 Revision).

CRS reportable jurisdictions

An updated [List of CRS Reportable Jurisdictions](#) was gazetted on 31 January 2022. Jamaica, Kenya and Morocco have been added as Reportable Jurisdictions for the 2021 Reporting Period (reports due in 2022) and Kuwait has been removed from the list.

18. New Enforcement Guidelines - CRS and ES

On 31 March 2022, the Ministry of Financial Services issued an [Industry Advisory](#) providing that the Tax Information Authority (TIA) has published [CRS Enforcement Guidelines](#) and [ES Enforcement Guidelines](#). The Guidelines set out the TIA's principles and processes for taking enforcement action under their respective frameworks and apply to all persons within the scope of the TIA's compliance monitoring and enforcement powers.

19. FATF progress and EU AML listing

The Ministry of Financial Services issued a [Media Release](#) on 24 January 2022 relating to the Cayman Islands' listing on the FATF's list of jurisdictions under increased monitoring and inclusion on the EU's AML list of high risk third countries.

Please see our [Update](#) on this topic for more information.

20. TCSPs - CIMA Supervisory Circular

On 19 January 2022, CIMA issued a [Supervisory Issues and Information Circular](#) providing a summary of CIMA's findings related to AML compliance by Cayman trust and corporate service providers (TCSPs).

TCSPs should look at CIMA's findings to understand the weaknesses identified and to ensure that their AML/CFT/CPF compliance frameworks meet the required standards to safeguard against money laundering risks and to strengthen their performance in any future inspections.

2020 Thematic Review

In 2020, CIMA undertook a focussed thematic inspection looking at compliance by a select group of TCSPs with regulation 12 of the AMLRs. That regulation deals with the obligation to identify and verify customers of the TCSP and their beneficial owners, including the obligations to:

- understand and collect information on the purpose and intended nature of the business relationship; and
- conduct ongoing due diligence on the business relationship.

The Thematic Review identified some major gaps, including in relation to a failure to maintain accurate and up-to-date information and inadequate implementation of ongoing monitoring procedures.

2021 Inspections

In 2021, CIMA performed a number of on-site inspections of TCSPs, including against compliance with regulation 12. Whilst CIMA noted fewer deficiencies when compared against the 2020 Thematic Review, areas of concern remain, including in relation to:

- the quality of customer due diligence information/documentation; and
- ongoing monitoring, including periodically monitoring transactions and reviewing customer files.

21. Non-Compliant Accounts Form no longer required

On 9 March 2022, CIMA issued a [Notice](#) confirming that the submission of Non-Compliant Accounts Form (**Form NCA v1**) for pre-2000 non-compliant accounts is no longer required.

Form NCA v1 was introduced to help CIMA track the remediation of accounts opened prior to 2000 with CDD/KYC requirements under (what was then) the Proceeds of Criminal Conduct Law and the AMLRs. Form NCA v1 is no longer active and CIMA will continue to monitor non-compliant accounts through its AML/CFT risk-based supervision.

22. Mourant Guides and Updates

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

- [Statutory mergers, schemes of arrangement and tender offers under Cayman Islands law - A comparison](#)
- [Commencement of VASP travel rule](#)
- [Top take-aways from the 11th Annual Global Fund Finance Symposium](#)
- [The Cayman Islands, the EU AML list and the FATF grey list](#)

Quick Fire Updates



Catherine Pham
Partner
Mourant Ozannes (Cayman) LLP
+1 345 814 9247
catherine.pham@mourant.com



Danielle Roman
Partner
Mourant Ozannes, Hong Kong
+852 3995 5705
danielle.roman@mourant.com



Hector Robinson QC
Partner
Mourant Ozannes (Cayman) LLP
+1 345 814 9114
hector.robinson@mourant.com



Ian Montgomery
Partner
Mourant Ozannes,, British Virgin Islands
+1 284 852 1730
ian.montgomery@mourant.com



Nicholas Fox
Partner
Mourant Ozannes (Cayman) LLP
+1 345 814 9268
nicholas.fox@mourant.com



Sara Galletly
Partner
Mourant Ozannes (Cayman) LLP
+1 345 814 9233
sara.galletly@mourant.com