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# Regulatory Update

Caribbean – Q3 2022

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# Quick Fire Updates

## BVI UPDATES

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### 1. Consultation on changes to BVI Business Companies legislation

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On 1 June 2022, the BVI Financial Services Commission (FSC) released a consultation on proposed changes to the BVI Business Companies legislation. The consultation includes an [Explanatory Memorandum](#) and draft legislation, with the key proposals including:

- the introduction of a prohibition against the issue of bearer shares under the BVI Business Companies Act (Revised 2020) (BVI BCA), together with transitional provisions;
- the reduction of the period of notice for resignation by a registered agent (RA) from 90 days to 60 days, and the introduction of a requirement that an RA must resign if its business relationship with a client is terminated on AML/CFT grounds;
- the introduction of a new annual financial return which must be filed by companies with their RA within 6 months of the financial year end to which the return relates;
- a requirement that alternate directors be included on a company's register of directors;
- the introduction of provisions allowing for publicly accessible registers of directors upon payment of a fee; and
- a new definition of 'voluntary liquidator', requiring that a voluntary liquidator be either a person who is physically resident in the BVI for a defined period in each year or who is a licensed insolvency practitioner.

### 2. BVIFars Portal – Annual fee delayed

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As noted in our [Q2 2022 Caribbean Regulatory Update](#), 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.

However, on 19 May 2022, the ITA announced that this implementation date has been postponed and the fee will now come into force later this year. The intended fee covers enrolment in the portal, review, and transmission of reporting submissions to partner jurisdictions, support and maintenance. Industry anticipates further communication from the ITA in due course.

### 3. BVI Financial Services Commission updates

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In its [April 2022 Newsletter](#), the FSC noted the following:

- Effective 2 May 2022, legacy company transactions (ie, files created prior to the launch of the VIRRGIN system) would be updated and streamlined to allow for faster access via company searches.
- Failure of new or continued companies to file a register of directors within 21 days of appointment or continuation respectively would result in the company going into a

penalty phase and receiving an electronic penalty notice via VIRRGIN. If a company does not file a register of directors within 30 days of a penalty notice, the company will be struck from the register.

- The findings of the money laundering and terrorist financing risk assessment reports relating to the insolvency services sector.

The [May 2022 Newsletter](#) highlighted the introduction of a new FSC operating structure with effect from 1 July 2022, in the form of the Authorisation and Supervision Division, which will apply a risk based approach to the supervision of regulated businesses and individuals. The new Authorisation and Supervision Division will consist of four units: Authorisation, Prudential Supervision, Specialised Supervision and Market Conduct Supervision. These replace the previous Investment Business, Insurance, Banking, Insolvency and Fiduciary Services divisions.

### Q1 2022 BVI FSC Statistical Bulletin

The FSC's most recent [Statistical Bulletin](#) was published on 27 May 2022, noting (amongst other things) that Q1 2022 had seen:

- an increase in the number of new incorporations as compared against Q1 2021, with the largest category representing companies continuing into the BVI;
- 112 new limited partnerships formed in the BVI;
- 59 new approved manager licence approvals; and
- 79 new fund registrations.

The [June 2022 Newsletter](#) confirmed the appointment of Mr Glenford Malone as Deputy Managing Director, Regulation with effect from 1 January 2022. The Newsletter and a [Press Release](#) dated 28 June 2022 also confirmed that the FSC's new Authorisation and Supervision Division would become fully operational on 1 July 2022.

### 4. BVI sanctions update

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The FSC and the BVI Financial Investigation Agency (FIA) issued a [Joint Industry Circular](#) on 2 May 2022 providing industry with a useful reminder of what is expected in order to comply with sanctions obligations, as well as links to the relevant resources.

In addition, the Government of the BVI issued a [Press Release](#) on 11 May 2022 noting that the Governor's Office, as the competent authority for sanctions in the BVI, had received confirmation that assets with an estimated value of over US\$400,000,000 have been frozen since the Russian invasion of Ukraine in February 2022.

### 5. CRS/FATCA filing deadline & support

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The deadline for filing Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA) reports relating to the 2021 financial year in the BVI was **31 May 2022**.

If you need support with your reporting, Mourant Governance Services can assist. Email [louise.somers@mourant.com](mailto:louise.somers@mourant.com).

# Quick Fire Updates

## 6. BVI - No direct rule

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On 9 June 2022, BVI Finance endorsed the announcement from the UK Government that it will work in collaboration and partnership with the newly-formed BVI Government of National Unity to implement reform without direct rule from London.

See the full press release [here](#).

## 7. UK Register of Overseas Entities

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On 15 March 2022, the UK Government passed the Economic Crime (Transparency and Enforcement) Act 2022 (the **Act**) which will require overseas entities owning UK real estate to register with the UK's Companies House.

For more information, see our Update, [New UK legislation affects overseas companies holding UK property](#), and the recent [Insight](#) published by the House of Commons Library.

## 8. Amendment of AEOI legislation

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The International Tax Authority (Amendment) Act, 2022 and the Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2022 were gazetted on **13 June 2022** and came into force with immediate effect.

### International Tax Authority (Amendment) Act, 2022

The key changes made to the International Tax Authority Act (Revised 2020) by the above are as follows:

- New definitions of 'company', 'Financial Institution', 'Intermediary (promoter)', 'legal entity', 'limited partnership', 'Multinational Enterprise Group' and 'reportable taxpayer' have been inserted.
- The functions of the ITA under section 4 (Functions of the Authority and the Board) have been clarified.
- New sections 4A to 4N have been added, relating to certain powers and duties of the ITA and obligations of legal entities, including the following:
  - General ability of the ITA to request that any person or legal entity furnish such information as the ITA may require.
  - Power of the ITA to request information and documents.
  - Ability of ITA to apply for a search warrant.
  - Duty of ITA to cooperate.
  - Ability of ITA to provide assistance to foreign competent authorities.
  - The requirement that legal entities establish and maintain adequate systems and controls to ensure compliance with mutual legal assistance legislation and measures taken thereunder.
  - The authority of the ITA to conduct compliance inspections.
  - The ability of the ITA to take enforcement action and issue directives.
  - Power to issue directives
- The Beneficial Ownership Secure Search System Act (Revised 2020) and Economic Substance (Companies and Limited

Partnership) Act (Revised 2020) have been added to the list of Mutual Legal Assistance Legislation at Schedule 1.

### Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2022

Whilst many of the amendments made were for the purposes of clarification, some key changes to the Mutual Legal Assistance (Tax Matters) Act (Revised 2020) to note are as follows:

- The definition of 'Authority' has been amended from the Financial Secretary to the ITA.
- Under a new section 7(1A), the ITA is provided with a specific power to conduct interviews and examinations of any person in the BVI at such time and place as the ITA may prescribe.
- The provisions relating to service of documents under section 10 have been updated and a new section 10A has been inserted, relating to the service of overseas documents in the BVI.
- Part II, which previously related to EU Taxation of Savings Income, has been replaced and now relates to the implementation of FATCA pursuant to the Model 1 Intergovernmental Agreement between the USA and the BVI.
- Part III, relating to CRS implementation, has been amended by:
  - inserting definitions of 'Non-reporting Financial Institution' and 'Reporting Financial Institution';
  - making the ITA the competent authority for CRS;
  - amending the provisions relating to the obligation for Reporting Financial Institutions to establish, implement and maintain written CRS policies and procedures; and
  - amending section 32(6) to provide that any person who wilfully or knowingly signs (or otherwise positively affirms) a false self-certification commits an offence and is liable (1) on summary conviction to a fine not exceeding US\$5,000 and/or up to 2 years' imprisonment, or (2) on conviction on indictment to a fine not exceeding US\$100,000 and/or to up to 5 years' imprisonment.
- Part IV, relating to Country by Country Reporting, has been amended by:
  - inserting a definition of 'resident for tax purposes in the Virgin Islands';
  - clarifying the meaning of 'public securities exchange' for the purposes of the definitions of 'Group' and 'Ultimate Parent Entity'; and
  - amending the reporting obligations applicable to surrogate parent entities.

## 9. Mourant Guides and Updates

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

- [British Virgin Islands non-charitable purpose trusts](#)
- [British Virgin Islands trusts](#)
- [What documents and information can a third party obtain from a BVI company?](#)
- [Global Legal Insights - Fund Finance 2022 - BVI](#)
- [Recognition and enforcement of foreign judgments and arbitral awards in the BVI](#)

# Quick Fire Updates

- Crypto Assets and the BVI - Court makes freezing order against Persons Unknown
- Mergers between BVI companies and foreign companies
- Mergers between BVI companies



## CAYMAN UPDATES

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### 10. Beneficial ownership update – Unexpired passport information required

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On 10 June 2022, the Ministry of Financial Services and Commerce issued a media release notifying industry of the publication of three sets of regulations confirming that beneficial ownership information under the Cayman regime must include details of the individual's unexpired and valid passport. Accordingly, this aspect of beneficial owner information must be updated on an ongoing basis.

The relevant regulations are listed below and were introduced with immediate effect on **10 June 2022**:

- the Companies (Amendment of section 254) Regulations, 2022;
- the Limited Liability Companies (Amendment of section 80) Regulations, 2022; and
- the Limited Liability Partnership (Amendment of section 61) Regulations, 2022.

The Press Release also confirmed that the Competent Authority will issue updated guidance on this point soon.

### 11. 2022 Mourant Regulatory Conference

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On 4 May 2022, Mourant hosted its eleventh annual Regulatory Conference at the Ritz Carlton, Grand Cayman. The conference, which was hosted by Mourant partner, Sara Galletly, included an opening message from the Minister of Financial Services and Commerce, a discussion on AML/CFT policies and procedures with the Cayman Islands Monetary Authority (CIMA) and a fireside chat on CRS and economic substance with the Department for International Tax Cooperation (DITC), followed by a panel discussion with the Financial Reporting Authority (FRA) on financial sanctions.

See our [Top 'Take-Aways'](#) for more information.

### 12. Cayman sanctions update

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On 7 April 2022, the Cayman Islands Government issued a [Statement](#) informing industry that it had established a joint task force to coordinate, identify and implement policy amendments to implement Russia sanctions.

The task force is chaired by the Director of the FRA and is comprised of representatives from key Cayman Islands agencies, including the following:

- Office of the Governor
- Ministry of Financial Services and Commerce
- CIMA
- FRA
- General Registry, Cayman Islands
- Cayman Islands Bureau of Financial Investigations
- Cabinet Office.

The same Statement noted that, since the commencement of the Russian invasion of the Ukraine in February 2022, more than 800 asset freezes had been imposed in the Cayman Islands, with over 400 Compliance Reporting Forms submitted, and confirmed the freezing of assets with an estimated value of US\$7.3 billion.

### 13. Update on Cayman's FATF/EU status

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On 7 June 2022, the Ministry of Financial Services issued a media release informing industry that the Minister of Financial Services and Commerce, the Hon. André Ebanks, had received confirmation from the European Commission's Directorate-General for Financial Services and Capital Markets Union (DG FISMA) that the EU does not require additional AML/CFT measures to be adopted to remove Cayman from the EU's AML/CFT list, over and above those required by the Financial Actions Task Force (FATF) action plan. Accordingly, once the FATF removes the Cayman Islands from its list of jurisdiction under increased monitoring, the EU will initiate steps to delist the Cayman Islands.

The FATF action plan initially comprised three actions points, of which the following two action points are outstanding

- The imposition of adequate and effective sanctions in relation to the filing of inaccurate, incomplete and outdated beneficial ownership information.
- Demonstrating the prosecution of money laundering cases and that such prosecutions result in the application of dissuasive and effective sanctions.

The Cayman Islands will report on the status of these two outstanding points at the FATF's October 2022 plenary meeting.

### 14. CIMA Circular on ESG and sustainable investing

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CIMA issued a [Supervisory Issues and Information Circular](#) on 13 April 2022 recognising the growth of environmental, social and governance (ESG) considerations, or 'sustainable investing', as an investment strategy. The Circular notes the need for ESG and sustainable funds, and their investors, to understand the risks and issues arising out of an ESG focus, stating that the persons charged with governance of regulated funds should:

- have clear roles and responsibilities, and start establishing procedures, to identify, manage and mitigate the risks arising out of the fund's investment strategy; and
- ensure clear and ongoing disclosures in the context of their reporting requirements.

The Circular confirms that CIMA will assess the information that it receives, as well as look at other jurisdictions, in order to formulate a suitable regulatory and supervisory approach for climate-related and other ESG-related risks.

### 15. CRS and ES enforcement commencing

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The Cayman Islands Ministry of Financial Services issued a press release on 14 April 2022 advising industry that the Tax Information Authority would commence enforcement actions in

# Quick Fire Updates

the coming weeks in relation to the CRS and Economic Substance (ES) frameworks.

Please see our [Update](#) on the CRS and ES Enforcement Guidelines for more information.

## 16. CRS/FATCA filing deadlines & support

The deadline for filing CRS and FATCA reports relating to the 2021 financial year in the Cayman Islands is **31 July 2022**.

In addition, the deadline for the Cayman Islands CRS Compliance Form for the 2021 financial year is **15 September 2022**.

If you need support with your reporting, Mourant Governance Services can assist. Email [louise.somers@mourant.com](mailto:louise.somers@mourant.com)

## 17. VASP registration FAQs updated

CIMA issued a [Notice](#) on 2 May 2022 confirming that the virtual asset service provider (VASP) registration FAQs have been updated in order to reduce delays in the registration process due to incomplete or low quality applications.

The VASP FAQs can be found on CIMA's website [here](#).

## 18. Supervisory circular – Testing of reliance on third party CDD

On 19 May 2022, CIMA released a [Supervisory Circular](#) relating to the requirement to test the simplified due diligence arrangements permitted under the Anti-Money Laundering Regulations (2020 Revision) (as amended, the AMLRs).

As provided by the Guidance Notes<sup>1</sup>, testing of eligible introducer (EI) relationships must be conducted on a random and periodic basis to ensure that identification and verification (IDV) information is produced by the EI upon demand and without undue delay. Records are also required to be kept in respect of such testing.

With nominee/agent arrangements, a written assurance letter must be provided confirming, amongst other things, that the nominee entity will also provide IDV information upon request and without delay.

## 19. Supervisory circular – Review of TCSP sanctions compliance

CIMA issued a [Supervisory Circular](#) on 17 June 2022 setting out the findings from a review of trust and corporate services providers' (TCSPs) compliance with Regulations 5 & 12 of the AMLRs undertaken in 2021, together with the controls required to address the deficiencies identified in relation to targeted financial sanctions (TFS) policies and procedures.

For the review, CIMA considered the results of inspections of 27 TCSPs involving 567 random customer files, assessing the levels of TFS compliance both at customer onboarding and during the

course of the business relationship. Whilst the majority of TCSPs examined had adequate policies and procedures for TFS screening at onboarding (63%) and ongoing monitoring (89%), the following weaknesses in implementation were highlighted:

- **Effectiveness of implementation:** 74% of TCSPs had at least one client file with weaknesses around TFS screening or clients or related parties.
- **TFS screening not conducted for at least one client or associated party:** 15% of the files reviewed showed instances where at least one client or associated party was not screened for TFS at onboarding, on a periodic basis thereafter or whenever there was an update of the TFS list by HM Treasury.
- **TFS screening not performed at client onboarding:** 14% of the files reviewed showed instances where TFS screening was not completed until after the business relationship was already established.
- **TFS screening not documented on client files:** 11% of the files reviewed had at least one client where the records of TFS screening completed were not documented and retained in the client file.
- **TFS screening not conducted through ongoing monitoring or periodic review:** 5% of the files showed instances where TFS screening did not take place during ongoing monitoring/periodic client file reviews or whenever there was an update of the TFS list.
- **Periodic reviews were not conducted in a timely manner in accordance with the clients' business and risk profile:** 14% of the files reviewed showed instances where the TFS review conducted did not accord with the clients' business and risk profile, meaning that the data was not kept current.
- **TFS screening results not documented:** 1% of the client files lacked documentation to show how the TCSP treated positive and/or false positive hits flagged by their TFS screening IT systems.

The Circular sets out CIMA's conclusion and recommendations, highlighting:

- the need to understand the TFS obligations under the AMLRs;
- the need to document all actions taken to comply with TFS, as well as the rationale for each action;
- the importance of providing TFS-related training to staff; and
- the requirement that TCSPs review and assess their AML/CFT compliance programmes on an ongoing basis to ensure that they meet the prescribed standards and are commensurate with the nature, size and complexity of the business.

All regulated entities should note that failure to comply with provisions of the AMLRs and Guidance Notes may result in CIMA taking action, including enforcement action which may include the imposition of an administrative fine.

<sup>1</sup> The Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands (5 June 2020) (the [Guidance Notes](#)), Part II, Section 5.E.18.

# Quick Fire Updates

## 20. The Anchor – May 2022 edition

A new edition of [The Anchor](#), CIMA's AML/CFT newsletter, was released in May. The areas focussed on in the newsletter include the following:

- *Targeted financial sanctions*: Given the recent sanctions escalation, the newsletter highlights the importance of having strong sanctions compliance procedures which enable quick responses to the rapid pace of change in this complex area.
- *National risk assessment (NRA)*: The Cayman Islands recently published a new [2021 National Risk Assessment](#) which, amongst other things, provides sectoral risk assessments in relation to multiple regulated financial service sectors. The Guidance Notes require that the money laundering, terrorist financing and proliferation financing threats and risks identified within the NRA be taken into consideration by Cayman financial service providers when conducting their own risk assessments.<sup>2</sup>
- *VASPs and the 'Travel Rule'*: The Anchor provides a reminder that the 'Travel Rule' will come into force in relation to VASPs on **1 July 2022**, providing background and noting practical challenges such as the 'sunrise issue' (ie, when the travel rule is not uniformly implemented across all jurisdictions). See our [Update](#) for more information.

## 21. Insurance (Amendment) Bill, 2022

The Insurance (Amendment) Act, 2022 was gazetted on 28 June 2022 and came immediately into force. The Act amends the Insurance Act, 2010 (as amended) to provide for capital redemption contracts or 'funding agreements'.

Under the Act, **capital redemption contracts** are defined as contracts under which an insurer may:

- (a) receive and accumulate sums of money; and
- (b) pay a sum or sums of money or render money's worth,

on dates and in amounts that are not contingent on human life or against risks of the person insured.

Such capital redemption contracts are now included within the definitions of 'contract of insurance', 'contract of reinsurance' and 'long term business' under the Insurance Act, and within the provisions relating to long term business accounts.

The Ministry of Financial Services and Commerce issued a [Media Release](#) regarding the Insurance (Amendment) Bill on 7 June 2022, with a further [Media Release](#) upon enactment on 28 June 2022.

<sup>2</sup> The Guidance Notes, Part II, Section 1.1.4.

## 22. Private Capital Perspectives: Podcast series

Mourant has launched a Private Capital Perspectives podcast series, designed to give a platform to some of the leading voices in the global private capital industry.

The first episode is an interview with Ranesh Ramanathan, a partner in the Boston office of Kirkland & Ellis. Ranesh focuses his practice on debt finance, distressed/special situations, alternative investments and credit fund transactions. He is also Co-Chair of Kirkland's Diversity & Inclusion Committee. Previously General Counsel at Bain, Ranesh talks about a range of interesting topics include remote working, distressed credit markets through the pandemic, the outlook for ESG and the ongoing challenges of diversity and inclusion.

Please [click here](#) to listen.

## 23. Mourant Guides and Updates

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

- [Cayman Islands trusts](#)
- [Fund finance; Sanctions](#)
- [Another take on winding-up exempted limited partnerships in the Cayman Islands](#)
- [Chambers Acquisition Finance Global Practice Guide - Trends and Developments, Cayman Islands](#)
- [Repackaging transactions - Key advantages to Cayman Islands orphan trust SPVs](#)
- [Outsourcing Cayman Islands AML/CFT compliance obligations](#)
- [Chambers Corporate M&A 2022 Global Practice Guide - Trends and Developments, Cayman Islands](#)

# Quick Fire Updates



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