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Regulatory Update

Caribbean – Q1 2023

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Quick Fire Updates

BVI UPDATES

1. Amendment of company fees

The BVI Business Companies (Amendment of Schedule 1) (No. 2) Order, 2022 was gazetted on 6 October 2022 and came into force on **1 January 2023**. A copy of the Order can be found [here](#). The Order amended Schedule 1 (*Fees and Penalties*) of the BVI Business Companies Act to increase certain fees and reflect changes made by the BVI Business Companies (Amendment) Act, 2022. Please see our [Q4 2022 Caribbean Regulatory Update](#) for more information.

Details of certain changes to Financial Services Commission (FSC) fees are provided below.

Incorporation fees

Section ¹	Description of Fee	Old Fee	New Fee
7(1)	Incorporation of:		
	(a) A company under sections 5(a), (c) or (e) authorised to issue no more than 50,000 shares	US\$450	US\$550
	(b) A company under sections 5(a), (c) or (e) authorised to issue more than 50,000 shares	US\$1,200	US\$1,350
	(c) A company specified in sections 5(b) or (d)	US\$450	US\$550
	(d) Private trust companies incorporated under the sections described in paragraphs (a) or (c) above	US\$1,350	US\$1,500
	(e) Private trust companies incorporated under the sections described in paragraph (b) above	US\$2,650	US\$3,000
8(1)	Incorporation of a restricted purposes company	US\$7,500	US\$8,000

Annual fee and certificate of good standing

Section	Description of Fee	Old Fee	New Fee
235	Certificate of good standing	US\$50	US\$100
236	Annual fee for a company which, on the date the fee is due, is:		
	(a) A company specified in sections 5(a), (c) or (e) authorised to issue no more than 50,000 shares	US\$450	US\$550

Section	Description of Fee	Old Fee	New Fee
236 cont'd	(b) A company under sections 5(a), (c) or (e) authorised to issue more than 50,000 shares	US\$1,200	US\$1,350
	(c) A company specified in sections 5(b) or (d)	US\$450	US\$550
	(d) Private trust companies incorporated under the sections described in paragraphs (a) or (c) above	US\$1,350	US\$1,500
	(e) Private trust companies incorporated under the sections described in paragraph (b) above	US\$2,650	US\$3,000
	(f) A restricted purposes company	US\$7,500	US\$8,000
	(g) A company registered as a foreign company carrying on business in the BVI	US\$500	US\$550

New section 17A and 17B fees – company names

Section 17A requires an application to be made to the Registrar where it is proposed that a company which will pursue charitable or non-commercial purposes (whether wholly or partly) be incorporated with a name ending specified in section 17(1) (including 'Limited', 'Ltd', 'Corporation', 'Corp' and 'Incorporated' and 'Inc'). Section 17B allows applications to be made to the Registrar for an exemption to the requirement under section 17(1) that a company name end with an ending specified in section 17(1).

Section	Description of Fee	Fee
17A(1)	Application by a company with a name ending in section 17(1) to pursue charitable or non-commercial purposes	US\$100
17A(3)	Approval of application	US\$200
17B(1)	Application for exemption to section 17(1) requirement	US\$100
	Approval of application	US\$200

Registers of directors

Section	Description of Fee	Old Fee	New Fee
118B(1)	Filing of a copy of a register of directors for registration by the Registrar	US\$50	US\$100
118B(3)	Filing a copy of a register containing a change to the register of directors	US\$50	US\$50
118B(4)	Provision by the Registrar of a list of directors upon request	---	US\$75

¹ Section references are to sections of the BVI Business Companies Act, Revised Edition 2020 (as amended).

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Consolidation/mergers and continuations

Section	Description of Fee	Old Fee	New Fee
174(2)(b)	Filing the required documents where a surviving or consolidated company is to be incorporated outside the BVI	US\$1,000	US\$2,500
184(1B)	Filing a notice of intention to continue as a company incorporated under the laws of a jurisdiction outside the BVI	---	US\$250
184(1C)	Filing a notice of rescission to continue as a company incorporated under the laws of a jurisdiction outside the BVI	---	US\$100
184(3)	Registration of a notice to continue as a company incorporated under the laws of a jurisdiction outside the BVI	US\$1,100	US\$2,500

Restorations and registration of foreign companies

Section	Description of Fee	Old Fee	New Fee
187	Registration of a company as a foreign company carrying on business in the BVI	US\$500	US\$550
217	Application to restore (after dissolution) the name of a company to the Register:		
	(a) Within 12 months of the date of dissolution of the company	---	US\$200
	(b) More than 12 months of the date of dissolution of the company	---	US\$400
	For restoration of the name of a company to the Register by the Registrar and issuance of a certificate of restoration, if the application was made:		
	(a) Within 12 months of the date of dissolution of the company	US\$500	US\$500
	(b) More than 12 months of the date of dissolution of the company	US\$1,500	US\$1,200
218B	Filing a sealed copy of the Court's order of restoration (after dissolution) of a company to the Register by the Registrar, if the application to the Court for restoration was made:		
	(a) Within 12 months of the date of dissolution of the company	---	US\$400

Section	Description of Fee	Old Fee	New Fee
218B cont'd	(b) More than 12 months of the date of dissolution of the company	---	US\$600
	For restoration of the name of a company to the Register by the Registrar on a Court order and issuance of a certificate of restoration, if the application to the Court for restoration was made:		
	(a) Within 12 months of the date of dissolution of the company	US\$1,500	US\$2,000
	(b) More than 12 months of the date of dissolution of the company	US\$1,500	US\$4,000
	For filing with the Registrar a statement of completion of liquidation or receivership	---	US\$100

Miscellaneous new fees

Section	Description of Fee	Fee
189A	Registration of notice of resignation as a registered agent of a foreign company	US\$100
193B(1)	Reinstatement of deregistered foreign company:	
	(a) Within 12 months of date of removal from Register	US\$550
	(b) More than 12 months of date of removal from Register	US\$1,000
200(3)	Application for consent of the FSC to put a regulated company into voluntary liquidation	US\$100
	Approval of proposed voluntary liquidator	US\$200
205A(2)	Consent of FSC for a regulated person to appoint an additional voluntary liquidator	US\$250
205B(6)	Filing of registration of a voluntary liquidator	US\$75
205C(7)	Filing of a copy of a Court Order removing a voluntary liquidator	US\$100
205D(2)	Application for FSC consent for a regulated person to appoint a replacement voluntary liquidator	US\$100
205D(3)	Filing notice of appointment of a replacement voluntary liquidator	US\$200
233	For the inspection of:	
	(a) The registers maintained by the Registrar under section 230(1)	US\$50
	(b) Any other qualifying document retained by the Registrar in accordance with section 230(4)	US\$100

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2. Register of Overseas Entities – January deadline

BVI companies that own UK property must provide Companies House with information about their beneficial owners and relevant trusts by **31 January 2023**.

For more information, please see the [Policy paper on Tax implications of the Register of Overseas Entities](#) published by HM Revenue & Customs on 16 December 2022 and our previous [Update](#).

3. Director names now publicly available

As noted in the [Q4 2022 Caribbean Regulatory Update](#) and our related [Update](#) regarding the recent changes made to the BVI Business Companies Act, a list of the directors contained in the register of directors of a BVI company (as filed with the Registrar) is now available upon request to the Registry and payment of the fee of US\$75.

It should be noted that:

- A company's full register of directors (which is currently required to be filed with the Registrar and is held privately) will not be available to the public.
- The information made available will not include dates of birth, addresses or the names of former directors.
- Searches are only permitted against the name of a specified company and not against the name of individual directors.

4. ITA economic substance enquiries

The International Tax Authority (ITA) has informed all financial institutions that, effective **7 November 2022**, all requests relating to economic substance such as re-openings, financial period change requests and responses to non-relevant activity should be sent to the email address: Compliancerequests@bviita.vg.

5. Russian sanctions – General Licence No. 01

On 20 December 2022, the BVI issued General Licence No. 01 (the **Licence**) under the Russia (Sanctions) (EU Exit) Regulations 2019, as extended to the BVI with modifications (the **Russia Regulations**).

The Licence relates to the supply or delivery of Russian oil by ship and the provision of financial services, funds or brokering services relating to the same. A copy of the Licence can be found at the website of the BVI Financial Services Commission [here](#).

6. Amendment of Proceeds of Criminal Conduct Act

The Proceeds of Criminal Conduct (Amendment) Act, 2022 was gazetted on 24 October 2022. This Act amended section 26B of the Proceeds of Criminal Conduct Act, Revised Edition 2020 (as amended), changing the composition of the National Anti-Money Laundering and Terrorist Financing Coordinating Council (the **Coordinating Council**) by removing the requirement that the Coordinating Council include the Financial Secretary and a member of the Committee of Law Enforcement Agencies.

7. BVIFARS portal fee update

The ITA has informed all relevant entities that the introduction of the BVIFARS portal fee is on track for 2023. There has been a change in the timeline, with the portal now scheduled to go live before the end of Q1 2023.

As a reminder, all relevant entities with reporting obligations are required to enrol in the BVIFARS portal to satisfy their respective obligations in relation to FATCA, CRS and CbCR.

The intended fee covers enrolment in the portal, review and transmission of reporting submissions to partner jurisdictions, support and maintenance.

Once the portal becomes live further details about the following will be provided:

- process for making payment through the portal; and
- options available for payment.

8. Amendment of Non-Profit Organisations Act

The Non-Profit Organisations (Amendment) Act, 2022 was gazetted on the 24 October 2022. This statute amends the Non-Profit Organisations Act, 2012 to bring the AML/CFT provisions in line with international standards and to clarify various existing provisions. A brief summary of the changes is set out below.

The Amendment Act:

- Inserts new definitions of 'high risk countries' and 'international exposure' and replaces the definition of 'relevant legislation' (as listed in a new Schedule 4)
- Provides that organisations which are unable to comply with section 12(3)(e) requirements for constitutional documents may submit a declaration that an amended constitutional document with the information required will be submitted within 30 days
- Clarifies the provisions in relation to renewal of registration for organisations
- Provides for an organisation to be deregistered where it fails to apply for the renewal of registration within 30 days of the expiration
- Provides for a deregistered organisation to be restored to the register on payment of a fee
- Empowers the Financial Investigation Agency (FIA) to carry out onsite and offsite inspections
- Gives the FIA discretion to determine the level of supervision required for each non-profit organisation (NPO) based on a risk-based approach and whether to exempt an NPO from active supervision
- Empowers the FIA to apply administrative penalties to all offences under the Act and to compound offences
- Removes the exemption from appointing a money laundering reporting officer for NPOs of 5 or fewer employees
- Requires NPOs to provide staff AML/CFT training
- Replaces Schedule 1 by providing separate forms for new applications, renewals and notifying change of information

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- Inserts a new Schedule 5 to align the Act with various financial legislation, adopting the categories of NPO as defined by the National Risk Assessment.

9. Virtual Asset Service Providers Act

The Virtual Asset Services Providers Act, 2022 was gazetted on 29 December 2022 but has not yet been brought into force. The Act is being introduced in line with Financial Action Task Force (FATF) requirements and makes provision for the:

- Registration and supervision of virtual assets service providers in relation to transactions involving virtual assets;
- Approval of provision of virtual assets custody service; and
- Approval of virtual assets exchanges.

The Act defines the activities relating to virtual assets which require registration, details the registration and ongoing requirements and obligations, assigns specific powers to the FSC in relation to virtual assets service providers and details the penalties for offences committed.

10. Insolvency (Amendment) Act, 2022

The Insolvency (Amendment) Act, 2022 was gazetted on 29 December 2022 but has not yet been brought into force. Once in force, the Act will amend the Insolvency Act, Revised Edition 2020 to:

- Enable the Virgin Islands Deposit Insurance Corporation (the VIDIC), to make an application to the High Court to appoint an eligible insolvency practitioner as a liquidator of a regulated person that is a 'bank', together with consequential amendments
- Formally transfer the Office of the Official Receiver from the FSC to the Government
- Empower the FSC, upon receipt of an insolvency practitioner's licence, to cancel such licence as opposed to revoking it.

11. Banks and Trust Companies (Amendment) Act, 2022

The Banks and Trust Companies (Amendment) Act, 2022 was gazetted on 29 December 2022 but has not yet been brought into force. Once in force, the Act will amend the Banks and Trust Companies Act, Revised Edition 2020 to:

- Provide for creation of a bridge bank which is licensed to temporarily take over and maintain all or certain assets, operations and liabilities of a failed bank
- Empower the FSC to designate a bank as a systemically important bank
- Require an application for licensing of a bank to include a written undertaking to provide the FSC with a copy of the policy of deposit insurance issued under the Virgin Islands Deposit Insurance Act, 2016
- Require existing banks to provide their policies of deposit insurance

- Require a licensee who receives an audit report that is qualified or contains any emphasis of a matter within the report, to immediately notify the FSC
- Make amendments to reflect that appeals relating to decisions of the FSC are now dealt with by the independent Financial Services Appeal Board.

12. Amendments to FSC powers and functions

The Financial Services Commission (Amendment) Act, 2022 was gazetted on 29 December 2022 but has not yet been brought into force. Once in force, the Act will amend the Financial Services Commission Act, Revised Edition 2020 to expand the functions of the FSC and empower it to:

- issue disqualification orders against directors and other senior officers of entities operating under financial services legislation; and
- streamline the relationship between the FSC and VIDIC in relation to financial institutions that may be in financial distress and unable to pay all their depositors.

13. FSC Q3 2022 Statistical Bulletin

The Q3 2022 Statistical Bulletin was published by the FSC was released in December 2022 and can be found [here](#).

14. FSC Enforcement Division – Annual Reports

The FSC released the 2020 and 2021 Annual Reports of the Enforcement Division, setting out details of the workload (including enforcement actions and key investigations) conducted during the relevant period.

15. Trade in Endangered Species (CITES) Act, 2020 brought into force

The Trade in Endangered Species (CITES) Act, 2020 was brought into force with effect from 27 October 2022. This statute implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) within the BVI and repeals the Endangered Plants and Animals Act, Cap. 89.

16. Mourant Guides and Updates

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

- [Continuing obligations for BVI approved funds](#)
- [Continuing obligations for BVI incubator funds](#)
- [What documents and records must a BVI company keep?](#)
- [What documents and information can a third party obtain for a BVI company?](#)
- [Continuation by a BVI company to a foreign jurisdiction](#)
- [Continuation by a foreign company into the BVI](#)
- [BVI companies: A guide](#)
- [Enforcement of assigned judgment debt refused by BVI court](#)

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CAYMAN UPDATES

17. January 2023 deadlines

Please note the following January 2023 deadlines:

15 January	Payment of Cayman Islands Monetary Authority (CIMA) annual fees. Directors registered or licensed under the Directors Registration and Licensing Act, 2014 must file their annual declaration and pay their annual fee. Registered Persons under the Securities Investment Business Act (2020 Revision) must file their annual declaration
31 January	Payment of annual fees to the General Registry. Filing of economic substance notification with the General Registry.

As 15 January 2023 falls on a Sunday, we advise that all filings are made and fees are paid by 13 January.

Failure to comply with the above deadlines can result in penalties. Please contact us if you require assistance.

18. Key filing dates - 2023

As we enter a new year, Mourant have prepared a useful [Reminder](#) regarding the key 2023 filing dates and requirements. Please contact us for guidance on any filing or compliance obligations.

19. Amendments to the Limited Liability Companies Act

The Limited Liability Companies (Amendment) Act, 2022 was gazetted and came into force on 19 October 2022. The Act made the following amendments to the Limited Liability Companies Act (2021 Revision) (the **LLC Act**):

- Section 5 was amended to clarify that the registration statement of a limited liability company (LLC) should include the names and addresses of the *initial* members of the LLC.
- Section 6 was amended to require the register of members, to include information on the interest held by each member of the LLC, including:
 - each group or class, if any, of LLC interest held by the member;
 - whether the LLC interest held by the member confers the right to vote on any matter which is to be voted on;
 - whether the member has the right to vote as a consequence of membership of any group of members or otherwise; and
 - whether such right is conditional.
- Section 61 was amended to introduce a requirement that, where the register of members of an LLC is kept at a place

other than the registered office, the LLC must maintain the information contained in the register at its registered office.

These amendments are aimed at aligning the LLC Act with the Companies Act (2022 Revision).

20. Ombudsman releases new Personal Data Breach Notification Form

The Cayman Islands Ombudsman released a new [online Personal Data Breach Notification Form](#) in mid-November 2022. This form may be used by data processors and controllers to report personal data breaches directly to the Ombudsman via the Ombudsman's website.

Prior to the introduction of this form, notification of a personal data breach was emailed to the Ombudsman using a [fillable PDF notification form](#). This method of notification is still available, if preferred.

For more information regarding the notification of data breaches, please see our [Cybersecurity and data breaches Update](#).

21. Cayman Islands FATF update

The FATF determined at the plenary meeting held in Paris on 21 October 2022 to keep the Cayman Islands on its list of jurisdictions with AML/CFT deficiencies (also known as the FATF 'grey-list'), despite noting that the Cayman Islands is now compliant with 62 out of the 63 recommended actions required in order to improve the Cayman Islands' AML/CFT regime.

The Cayman Islands Ministry of Financial Services & Commerce (the **Ministry**) released a [Media Release](#) on 21 October noting that the final recommended action relates to money laundering investigations and prosecutions, which the FATF has encouraged the jurisdiction to complete by February 2023.

22. Updated list of approved stock exchanges

An updated list of approved stock exchanges was adopted by the CIMA on 24 October 2022 and can be found [here](#).

23. CIMA Regulatory Policies on complaints gazetted

The following Regulatory Policies on complaints were gazetted in early November 2022:

- [Regulatory Policy on Complaints Against the Authority](#); and
- [Regulatory Policy on Complaints Against Licensees, Registrants and Other Supervised Entities](#).

Complaints against the Authority

The objective of the Regulatory Policy on Complaints against the Authority policy is to promote CIMA's transparency and fairness in performing its functions and managing its affairs.

In summary, the policy:

- establishes the main criteria and approach for submitting complaints against CIMA;

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- provides that complaints can be made relating to CIMA's operations, supervisory and regulatory functions, disputes of contractual and/or commercial nature and employees; and
- provides details about the criteria for filing a complaint, how to direct a complaint and the complaints handling process.

Complaints against Licensees, Registrants and Other Supervised Entities

In summary, the Regulatory Policy on Complaints against Licensees, Registrants and Other Supervised Entities:

- establishes the criteria for submission of complaints against supervised entities to CIMA and a process by which such complaints will be dealt;
- provides that such a complaint should first be raised with the supervised entity (as CIMA expects all supervised entities to have satisfactory systems and controls in place to enable them to deal with customer complaints in a thorough and prompt manner);
- notes that CIMA will request proof from the complainant that they have taken reasonable steps to resolve the complaint with the supervised entity before considering any complaint;
- provides that CIMA will investigate where the complainant is of the view that the supervised entity has not observed good conduct of business or may have breached any of the regulatory acts;
- clarifies that where the matter is of a criminal nature, such as suspected theft or fraud, complainants should consider reporting the matter directly to the Royal Cayman Islands Police Services (RCIPS) or, in circumstances of suspected money laundering, financing of terrorism or proliferation financing, the Financial Crime Investigation Unit of the RCIPS;
- provides that where the complaint relates to improper conduct by the complainant's employer, the Whistleblower Protection Act, 2015 and data protection considerations should be taken into account before submitting a complaint; and
- clarifies that CIMA is not empowered to arbitrate in complaints about supervised entities, or to compel an entity to pay compensation to a customer in relation to an individual complaint.

24. Cayman Islands leadership at OECD global forum

The Cayman Islands has been appointed to the following bodies of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (the **Global Forum**) for the period of 1 January 2023 to 31 December 2025:

- Member of the Steering Group; and
- Vice Chair of the Peer Review Group (reappointment).

These appointments were announced at the OECD Global Forum Plenary in Seville, Spain in November 2022. See the Ministry's [Media Release](#) for more information.

25. Cayman Islands given highest possible rating by OECD for effectiveness of AEOI regime

The Global Forum's report containing the results of the [Peer Review of the Automatic Exchange of Financial Account Information 2022 for the Cayman Islands](#) was released on 9 November 2022.

This report analyses the legal frameworks put in place to implement the automatic exchange of information (AEOI) standard and the effectiveness of the implementation of the AEOI standard in practice. The Cayman Islands was given the highest possible ranking on both assessments.

26. Cayman Islands Government considers EU Court of Justice ruling on beneficial ownership registers

On 30 November 2022, the Ministry released a [Statement](#) regarding the EU Court of Justice's (ECJ's) recent judgment regarding public beneficial ownership registers in Luxembourg.

The ECJ ruling followed the Ministry's preparation of draft legislation which proposes (amongst other things):

- to consolidate the beneficial ownership regime into one statute; and
- a prospective approach regarding the introduction of public beneficial ownership registers in the Cayman Islands, in line with the requirements of the United Kingdom.

The ECJ ruling will be reviewed by the Ministry to determine any implications with respect to the public beneficial ownership proposal previously drafted.

27. Cayman engagement with the EU Parliament FISC Committee

Minister for Financial Services and Commerce, the Hon. André Ebanks attended a meeting of the EU Parliament's Subcommittee on Tax Matters (FISC) to discuss how the Cayman Islands cooperates on tax matters globally.

See the Ministry's [Media Release](#) for more information.

28. Latest edition of The Anchor

CIMA issued the October 2022 issue of its AML/CFT newsletter, [The Anchor](#), in the last quarter. Below is a brief overview of the topics covered.

Financial sanctions evasion typologies: Russian Elites and enablers

The newsletter refers to the 'Red Alert' notice issued by HM Treasury's Office of Financial Sanctions Implementation, the UK National Crime Agency and others relating to financial sanctions evasion typologies by Russian elites and enablers in July 2022.

The purpose of the Red Alert was to provide information on common techniques used by designated persons and their enablers to evade financial sanctions.

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Revision of FATF Recommendation 25 – Beneficial ownership of legal arrangements

The newsletter summarises the areas considered by the FATF in its current review of Recommendation 25 on measurements to prevent the misuse of legal arrangements for money laundering or terrorist financing.

DAOs – AML/CFT risks

The newsletter provides some guidance regarding the AML/CFT risks associated with decentralised autonomous organisations (DAOs) and certain questions which should be incorporated into a risk assessment.

29. Circular to SIBA licensees and registered persons

On 3 January 2023, CIMA issued a circular to all securities investment business licensees and registered persons in relation to CIMA's expectation that these entities undertake regular internal audits of their controls and infrastructure to ensure that they are suitably robust in consideration of the nature and scale of their operations.

The circular requests a schedule of the internal audit reviews planned for the period of 1 January 2023 to 31 December 2023 and provides that CIMA expects to receive any issued internal audit report within three months of completion.

30. Mourant Guides and Updates

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

- [Cybersecurity and data breaches in the Cayman Islands](#)
- [Cayman Islands Key Filing Dates 2023](#)
- [Take privates by way of a scheme of arrangement in the Cayman Islands](#)
- [Cayman Islands probate and letters of administration](#)

Quick Fire Updates



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



James Broad
Partner
Mourant Ozannes (Hong Kong) LLP
+852 3995 5722
james.broad@mourant.com



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