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Regulatory Update

Caribbean – Q3 2023

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Quick Fire Updates

BVI UPDATES

1. IRS Tax Identification Number update for FATCA

On 11 May 2023, the BVI International Tax Authority issued a [Notice](#) providing that the United States Internal Revenue Service has released Notice 2023-11 for foreign financial institutions (FFIs) in jurisdictions with a Model 1 Intergovernmental Agreement (which includes the British Virgin Islands (BVI)) (the [IRS Notice](#)).

The IRS Notice offers relief for FFIs and taxpayers in providing Tax Identification Numbers relating to pre-existing accounts, should certain eligibility criteria be met. The IRS Notice extends the existing relief for reporting calendar years 2022, 2023 and 2024.

2. FSC Newsletters

May 2023

The BVI Financial Services Commission (FSC) [Newsletter: May 2023](#) provides a legislative summary of the BVI Business Companies (Financial Return) Order, 2023 and the BVI Business Companies (Amendment) Act, 2023, together with related practical guidance in the 'Registry's Corner' section.

June 2023

The FSC's [Newsletter: June 2023](#) provides:

- A summary of the [Virgin Islands Money Laundering Risk Assessment 2022](#), which was published on 9 June 2023 (see below for more detail).
- Details of the BVI's involvement in the FSB Regional Consultative Group of The Americas Meeting and the CFATF 56th Plenary Meeting.
- Updates and important notices concerning the BVI Business Companies Act amendments which came into force on 1 January 2023.
- A legislative summary regarding The Anti-Money Laundering and Terrorist Financing (Amendment) Code of Practice, 2023, which took effect on 17 March 2023. See also our [Q2 2023 Update](#) for more detail.
- Links to the 2023 FSC Guides on the Prevention of Money Laundering, Terrorist Financing and Proliferation Financing for each of the Trust and Corporate Services Providers and Virtual Asset Service Provider (VASP) sectors.

3. List of participating jurisdictions for CRS updated

An updated [list](#) of participating jurisdictions for CRS as of April 2023 was gazetted on 27 April 2023. This updated list differs significantly from the version gazetted on 2 March 2023 with 75 countries included in the April version as opposed to the 137 countries included in the March version.

4. Money Laundering Risk Assessment 2022

The BVI FSC and BVI FIA published the [Virgin Islands Money Laundering Risk Assessment 2022](#) on 9 June 2023. The Risk Assessment focuses on identifying and analysing the domestic

and international money laundering (ML) threats and vulnerabilities faced by the BVI, together with ML risks that exist within the financial services and Designated Non-Financial Businesses and Professions (DNFBP) sectors.

The report identified the key ML threats as follows:

- at the national level - drug trafficking, migrant smuggling, murder and corruption
- at the international level - fraud, corruption and tax evasion
- at the sectoral level - the TCSP, investment business, legal and VASP sub-sectors were identified as having a higher risk for ML in comparison to other financial services and DNFBP sectors.

A related joint [press release](#) encouraged all supervised entities to use the information in the Risk Assessment to inform and support their own risk assessments to effectively identify, understand and mitigate their ML risks. The FSC intends to host a webinar in July 2023 to present the findings of the Risk Assessment to stakeholders, with the aim of ensuring that each sector is aware of its specific risks.

5. Virgin Islands General Licence No. 3, 2023

On 13 April 2023, the Governor of the BVI issued the [Virgin Islands General Licence No. 03, 2023](#) under the Russia (Sanctions) (EU Exit) Regulations 2019, as extended to the BVI with modifications (the [Licence](#)). The Licence, which came into immediate effect, relates to payment of reasonable professional legal fees and expenses. Reporting forms for the Virgin Islands Legal Fees General Licence can be found [here](#).

Notably, the Licence distinguishes between legal fees in relation to pre-designation work and work started post-designation. For legal work carried out in satisfaction of a prior obligation, there is a US\$600,000 cap on the amount that can be claimed over the duration of the licence.

For legal work commenced post-designation, users will need to demonstrate via their reporting obligations that all fees paid are reasonable by providing details of hourly fees, work streams and evidence that overall fees are at or below the US\$600,000 cap.

In addition, on 9 June 2023 the Governor's Office issued a [General Reminder](#) regarding the use of the Virgin Islands General Licence No. 02, 2023 (Wind Down of Trust Services Provided to Designated Persons).

6. Q1 2023 BVI FSC Statistical Bulletin

On 31 May 2023, the FSC published its quarterly [Statistical Bulletin](#) providing key statistics, information and analysis on financial services activities for the first quarter of 2023.

7. Industry Circular: Registry's Corner

On 11 April 2023, the FSC published an [Industry circular: Registry's Corner](#) reminding licensed agents and service providers of the following:

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- **Collection of documents** - Items are considered as 'received' once the Registry's records indicate VIRRGIN has remitted the documents and there is proof of the signature on collection. Requests for re-issuing of documents will require new payment of the corresponding fees.
- **Company names** - a company's full name and its foreign character name must appear on the foreign language translation certificate submitted to the Registry when filing a transaction.

8. Mourant Guides and Updates

Mourant has uploaded the following Updates and Guides to our website over the last quarter:

- [BVI limited partnerships](#)
- [BVI open-ended funds](#)
- [BVI closed-ended funds](#)
- [Continuing obligations for BVI private and professional funds](#)
- [Continuing obligations for BVI incubator funds](#)
- [Continuing obligations for BVI approved funds](#)
- [BVI Approved Managers Regime](#)
- [British Virgin Islands non-charitable purpose trusts](#)
- [Closed-ended private investment funds - a comparison \(BVI and Cayman\)](#)

CAYMAN UPDATES

9. Cayman's progress with the FATF

Attorney General, the Hon. Samuel Bulgin, KC and Minister for Financial Services and Commerce, the Hon. André Ebanks presented an update to the FATF's International Co-operation Review Group on the progress being made with Cayman's money laundering investigations and prosecutions on 5 May 2023.

The findings for the review process were reported to the FATF for decision during the FATF Plenary held in June. At the end of the plenary, on 23 June 2023, the FATF made the initial determination that the Cayman Islands have substantially completed its action plan and warrants an on-site assessment to verify that the implementation of the AML/CFT reforms has begun and is being sustained, and that the necessary political commitment remains in place to sustain implementation in the future. An onsite visit is a standard requirement of the delisting process and is tentatively scheduled for late August or early September 2023.

An onsite visit report then will be presented at the next FATF Plenary, now scheduled for October this year, at which the Cayman Islands will receive confirmation as to whether it will be delisted from the FATF's list of Jurisdictions under Increased Monitoring.

10. Economic substance notifications for general partnerships

The Department for International Tax Co-Operation (the DITC) requested that the economic substance notifications (ESNs) for general partnerships are submitted to the DITC via the email of a bulk spreadsheet no later than 30 June 2023. This request was made to ensure that ESNs for general partners are captured as the DITC's system is currently unable to receive ESNs for general partnerships via the usual ESN platform/portals due to a technical glitch caused by the fact that general partnerships are not currently required to be registered with the General Registry.

As a reminder, partnerships became in scope of the economic substance regime from 2022, so 2023 is the first year they are required to file an ESN. Exempted partnerships and limited partnerships are able file the ESN through the usual ESN platform/portal and the ESN for these entities was due 31 March 2023.

11. Amendment bills gazetted

The following Acts were gazetted on 26 May 2023 and came into force with immediate effect:

- Monetary Authority (Amendment) Act, 2023
- Companies Management (Amendment) Act, 2023
- Directors Registration and Licensing (Amendment) Act, 2023
- Insurance (Amendment) Act, 2023
- Money Services (Amendment) Act, 2023

- Securities Investment Business (Amendment) Act, 2023
- Virtual Asset (Service Providers) (Amendment) Act, 2023

Each Act amends the relevant principal Act to provide for the liability of partnerships, limited liability partnerships (LLPs), exempted limited partnerships (ELPs) and unincorporated associations and partners/persons (as applicable) concerned in their management or control. Ultimately these amendments have the effect of strengthening CIMA's powers to apply proportionate and dissuasive sanctions to all types of legal persons.

The Monetary Authority (Amendment) Bill also expands CIMA's power to impose administrative fines and provide for the disclosure and sharing of non-public information uncovered during the carrying on of its duties with an overseas regulatory authority.

12. Proposed amendments to the Proceeds of Crime Act

The [Proceeds of Crime \(Amendment\) Bill 2023](#) was gazetted on 3 April 2023 and seeks to amend the principal Act as follows:

- reform the provisions relating to intelligence gathering and sharing, and investigations;
- provide protection for self-regulatory bodies against liability;
- ensure that the principal Act conforms to international best practices; and
- modernise the conduct of prosecutions, which includes clarifying the evidential basis on which it may be shown that property is criminal property or is obtained through unlawful conduct.

We will provide more detail on these changes once the law is in force.

13. CIMA rules and statements of guidance issued

The following rules, regulatory policies and statements of guidance from the Cayman Islands Monetary Authority (CIMA) have been issued and are available on CIMA's [website](#):

Gazetted on 14 April 2023 and immediately in effect:

- Rule – Cybersecurity for Regulated Entities
- Regulatory Policy – Approved Stock Exchanges
- Statement of Guidance – Cybersecurity for Regulated Entities
- Statement of Guidance – Outsourcing Regulated Entities
- Statement of Guidance – Nature, Accessibility and Retention of Records
- Statement of Guidance – Corporate Governance for Mutual Funds and Private Funds

Gazetted on 14 April 2023 and effective from 14 October 2023

- Rule – Corporate Governance for Regulated Entities
- Rule and Statement of Guidance – Internal Controls for Regulated Entities

Gazetted on 26 May 2023 and effective from 27 May 2024:

- Rule and Regulatory Policy on Domestic Systemically Important Deposit-Taking Institutions

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- Rule and Statement of Guidance – Reinsurance Arrangements

Gazetted on 7 June 2023 and immediately in effect:

- Regulatory Policy – Licencing for Class D Insurers

These regulatory measures introduce a number of changes that impact how the relevant regulated entities should operate. It is important that regulated entities consider the rules, regulatory policies and statements of guidance, as applicable, and are aware of CIMA's expectations.

In relation to the rules and statement of guidance that come into effect from 14 October 2023, see our [Cayman Islands funds - CIMA regulatory measures update](#) for a summary of how these measures will impact Cayman Islands regulated funds.

14. Latest edition of The Anchor

CIMA published the latest edition of its AML/CFT newsletter, [The Anchor](#) in April 2023. Below is a brief overview of the topics covered:

Spotlight on beneficial ownership

The newsletter refers to the current industry consultation on the Beneficial Ownership Transparency Bill, 2023, which provides a number of proposed changes to the current beneficial ownership regime. The newsletter also notes the recent revisions to FATF's Recommendation 25 (Transparency and Beneficial Ownership of Legal Arrangements).

FinCEN alert on human trafficking and modern slavery

The newsletter includes a summary of the Financial Crimes Enforcement Network's (FinCEN) recent alert on 'red flags' for human smuggling over the south-west border of the USA.

Ransomware: FATF red flag indicators

The newsletter also provides a summary of the FATF's recent update to red flags indicators for banks, virtual asset service providers and other financial and payment institutions to help sport potential illicit ransomware payments.

15. CRS lists of participating and reportable jurisdictions

The Department for International Tax Cooperation (DITC) issued an industry advisory on 5 April 2023, providing that updated lists of participating and reportable jurisdictions for CRS had been published in the Cayman Islands [Extraordinary Gazette](#) dated 31 March 2023.

16. CRS and FATCA regulatory deadlines

Financial institutions must file their CRS and FATCA reports (including any reportable accounts and/or CRS filing declarations) for the 2022 reporting year with the DITC by **31 July 2023**.

CRS compliance forms must be filed by **15 September 2023**.

Contact your CRS/FATCA service provider for guidance.

17. DITC Updates Bulletin: June 2023

The DITC issued an [Updates Bulletin](#) in June 2023 providing guidance in relation to the preceding 2 items, as well as the following topics:

FATCA: Revised IRS TIN Placeholder Codes

In January 2023, the IRS released notice 2023-11, regarding Foreign Financial Institution Temporary U.S. Taxpayer Identification Number Relief. Question 6 of the IRS Reporting FAQs contains the updated list of acceptable placeholder TINs. The [DITC Portal User Guide](#) has been updated (see pages 57-59) for guidance on how the TIN placeholder codes should be used.

CRS Compliance Team reminders

The DITC's CRS Compliance Team provided industry with some reminders, including that the CRS requires the date of birth of all individuals and the TIN for all persons included in the XML report.

DITC Portal Update – FI Deactivations

The DITC Portal now has the functionality to deactivate a Financial Institution (FI) from the DITC Portal where the entity has ceased to exist or is otherwise no longer a Cayman Reporting FI. A form is available to the Principal Point of Contact (PPoC) to request an FI deactivation, and the DITC Portal User Guide has been updated (see pages 24-25) to provide guidance on how to fill out the form.

To complete a deactivation, all existing reporting obligations must be satisfied and the PPoC must submit evidence to support the claim that an entity has ceased to exist or is no longer a Cayman Reporting FI.

It should be noted that an entity does not cease to be classified as a Cayman Reporting FI for the sole reason of being in liquidation.

18. General Licence 2023/0002 – Legal Services

On 14 April 2023, the Governor's Office issued General Licence [GL/2023/0002](#) under the Russia (Sanctions) (EU Exit) Regulations 2019 and the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019, each as extended to the Cayman Islands with modifications (the **Licence**). The Licence, which came into immediate effect, relates to payment of reasonable professional legal fees (subject to a cap of US\$600,000 over the duration of the Licence) and expenses (subject to a cap of 5% of the legal fees or US\$30,000, whichever is lower, over the duration of the Licence).

Reporting forms relating to the use of the Licence can be found on the FRA's [website](#).

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19. Update to list of sanctions targets by regimes in force in the Cayman Islands

On 9 May 2023, CIMA published an [Industry Notice](#) advising financial service providers that an update has been made to the current sanctions regime in force in the Cayman Islands. The Financial Reporting Authority's list of sanctions orders can be found [here](#).

20. Supervisory Information Circular for Insurers

On 28 June 2023, CIMA released a [Supervisory Information Circular - Stress Testing for Insurers](#). This Supervisory Circular is applicable to all categories of insurers that are licensed by CIMA to conduct (re)insurance business and provides guidelines to follow in the development and implementation of stress testing activities.

21. CIMA's Thematic Cybersecurity Review Report 2023

CIMA issued its [Thematic Cybersecurity Review Report](#) (the **Report**) in June 2023. This Report looks at the findings resulting from the cybersecurity thematic review of 12 regulated entities spanning the Banking, Insurance and Securities sectors conducted between April and December 2022, providing insight on identified good practice and areas of concern within the following key elements of review:

- Cybersecurity Framework
- Risk Management
- IT Systems Controls and Use of Internet
- Employee Selection, Training and Awareness
- Outsourcing and Intra-Group Arrangements
- Data Protection
- Accountability
- Notification Requirements

22. Mourant Guides and Updates

Mourant has uploaded the following Updates and Guides to our website over the last quarter:

- [Private funds in the Cayman Islands](#)
- [Cayman Islands funds - CIMA regulatory measures update](#)
- [Cayman Islands exempted companies](#)
- [The Cayman Islands virtual asset service providers regime](#)
- [Checking the Lifeboat - Cayman Islands Consensual Restructuring Strategies](#)
- [Enforcing security over shares in a Cayman Islands exempted company](#)

Quick Fire Updates



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