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# Regulatory Update

Caribbean – Q4 2023

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# Quick Fire Updates

## BVI UPDATES

### 1. General Licence [No.04], 2023 – Maintenance of economic resources

On 13 September 2023, the Governor's Office of the Virgin Islands issued [General Licence \[No.04\], 2023](#) (Maintenance of economic resources) under regulation 64 of The Russia (Sanctions) (EU Exit) Regulations, 2019 (as extended to the BVI with modifications, the [Russia Regulations](#)).

This licence is aimed at facilitating certain payments to be made on behalf of BVI business companies which are owned or controlled directly or indirectly by a designated person under the Russia Regulations. Such payments include:

- registered agent or corporate service provider fees and expenses (up to a maximum of US\$50,000 for any calendar year);
- fees payable to the Registrar of Corporate Affairs;
- director fees (up to a maximum of US\$20,000 for any calendar year);
- shareholder fees (up to a maximum of US\$20,000 for any calendar year); and
- any fees payable to the Government of the Virgin Islands or any statutory body of the Virgin Islands,

where such fees are payable under BVI legislation, in each case, in respect of a BVI business company or a foreign company.

The term of the Licence is twelve months and anyone relying upon the permissions granted by the Licence must report in the prescribed form. See the [Publication Notice](#) issued by the Governor's Office for more detail.

### 2. Expiry of General Licence [No.03] – Payment of reasonable professional legal fees and expenses

The Governor's Office has issued a [Reminder](#) to industry that [General Licence \[No.03\], 2023](#), which allows for payment for the provision of legal services to designated persons under either the Russia Regulations or The Republic of Belarus (Sanctions) (EU Exit) Regulations, 2019 (as extended to the BVI with modifications), will expire on **13 October 2023**.

All reported use of this Licence should be sent to the Governor's Office by 20 October 2023.

### 3. BVI FSC Meet the Regulator Forum

On 3 October 2023, the BVI Financial Services Commission (FSC) hosted a Meet the Regulator Forum which included the following sessions:

- BVI Business Companies (Amendment) Act, 2022 - Application of the Transitional Provisions and Related Matters;
- Filing Financial Returns;
- Legislative Reforms in the Pipeline; and
- Virtual Asset Service Providers - Processes and Procedures,

together with a roundtable discussion dedicated to international cooperation issues.

Mr Kenneth Baker, Managing Director/CEO of the FSC also presented the Managing Director's Regulatory and Registry Update, with the following matters on the agenda:

- FSC restructure
- Update on BOSSs and Economic Substance
- FATF Guidance on Beneficial Ownership - R 24
- VIRRGIN upgrade
- CFATF Mutual Evaluation
- Taking enforcement action against directors
- Governance, Risk Management & Compliance Master Class
- Banks not accepting payments from Designated Persons
- Official Receiver
- Publicly Accessible Registers of Beneficial Owners

The presentation slides from the Forum can be found [here](#).

### 4. Q2 2023 BVI FSC Statistical Bulletin

The FSC published its [Q2 2023 Statistical Bulletin](#) on 30 August 2023, providing key statistics, information and analysis on financial services activities for the second quarter of 2023.

### 5. BVI FSC Newsletter: October 2023

The [BVI FSC Newsletter - October 2023](#) provides:

- A reminder to the BVI financial services industry to be attentive to money laundering risks and systemic effects, together with details of the recent FSC webinar in relation to the 2022 Risk Assessment Report findings.
- Updates from the Registry of Corporate Affairs, including in relation to:
  - additions to the authorised signatories list;
  - a reminder that it is not the function of Client Services or the Registry of Corporate Affairs to provide legal advice or interpretation of legislation; and
  - confirmation that the list of directors will not be included in special certificates issued by the Registrar of Corporate Affairs, pursuant to section 235A of the BVI Business Companies Act. The list of directors may be requested through VIRRGIN in the 'Request for Certifications' function for a fee of US\$75.
- Details of the Meet the Regulator Forum
- Announcement of the BVI FSC executive visit to Hong Kong planned for 9-13 October 2023
- Details of the Money Matters BVI Wills & Estate Planning Forum
- Recent changes to the following financial services regulatory legislation:
  - Company Management Act, 1990
  - Financing and Money Services Act, 2009
  - Banks and Trust Companies Act, 1990
  - Securities and Investments Business Act, 2010
  - Insurance Act, 2008

# Quick Fire Updates

See our [Q2 update](#) for more information on these legislative changes.

- [Public Statements](#) issued by the FSC in the third quarter of 2023
- [BVI FSC holiday and closure dates](#)

## 6. BVI FSC introducing Webinar Newsletters

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The FSC has announced that its monthly newsletter will change to a quarterly newsletter. In addition, the FSC will be introducing the following two new methods of communication:

- [BVI FSC Webinar Newsletters](#) which will feature any combination of video, graphic, and text applications.
- [LinkedIn](#) (via the profile name 'BVI Financial Services Commission') allowing the FSC to increase visibility and brand recognition and stay in touch with industry and other audiences on a common platform.

## 7. Mourant Guides and Updates

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

- [What documents and records must a BVI company keep](#)
- [Disposal of assets by a BVI company](#)
- [BVI Business Companies – Financial reporting rules](#)
- [Enforcing security over shares in a BVI company](#)
- [Continuation by a BVI company to a foreign jurisdiction](#)

# Quick Fire Updates

## CAYMAN UPDATES

### 8. Cayman's progress with the FATF

As referred to in our [Q3 update](#), the FATF performed their onsite visit in September 2023 as part of the steps required to remove the Cayman Islands from the FATF's List of Jurisdictions under Increased Monitoring.

The findings of the FATF's visit will be discussed at the FATF Plenary meeting to be held from 23-27 October 2023, following which the Cayman Islands will receive confirmation of whether it has met all outstanding FATF requirements and will be removed from the List of Jurisdictions under Increased Monitoring.

### 9. CIMA regulatory measures effective 14 October

As a reminder, and as referred to in our [Q3 update](#), the following measures have effect from 14 October 2023:

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

These measures will require regulated funds to establish, implement and maintain a corporate governance framework and have adequate and effective internal controls that are proportionate in application to the size, complexity, nature of business and risk appetite of the regulated entity.

For more information, see our update: [Cayman Islands regulated funds – CIMA regulatory measures effective October 2023](#).

### 10. Revised AML Guidance Notes

On 30 August 2023, CIMA published revised [Guidance Notes](#) on the Prevention and Detection of Money Laundering (ML), Terrorist Financing (TF), and Proliferation Financing in the Cayman Islands (August 2023) (the [Revised Guidance Notes](#)).

The Revised Guidance Notes replace the previous guidance notes issued on 5 June 2020 and subsequent amendments. The key changes are to:

- Parts I, V and VII to provide for guidance on the use of e-KYC and remote customer due diligence/ongoing monitoring provisions;
- Part IX relating to virtual assets service providers (consolidation of the sector specific guidance notes gazetted in February 2021); and
- Part X relating to securitization (consolidation of the sector specific guidance notes gazetted May 2021).

### 11. Proceeds of Crime (Amendment) Act, 2023 gazetted

The [Proceeds of Crime \(Amendment\) Act 2023](#) (the [Amendment Act](#)) was gazetted on 6 October 2023 but has not yet come into force. The Amendment Act will amend the Proceeds of Crime Act (2020 Revision) to:

- reform the provisions relating to intelligence gathering and sharing, and investigations;
- provide protection against liability for persons appointed as supervisory authorities;
- 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 further detail on these changes once the Amendment Act is in force.

### 12. Beneficial Ownership Transparency Bill gazetted

The Beneficial Ownership Transparency Bill (the [Bill](#)) was gazetted on 30 August 2023, along with nine related amendment bills, and will be presented before Parliament in the fourth quarter of 2023.

The Bill consolidates the existing beneficial ownership regime (which is currently found in multiple pieces of entity-specific legislation). The changes are driven by the continuing evolution of the underlying international standards, namely the FATF 40 Recommendations and associated guidance. The key changes include:

- the expansion of the regime to include limited partnerships and exempted limited partnerships, together with companies, foundation companies, LLCs and LLPs;
- providing an alternative route to compliance for entities listed on specified stock exchanges, persons licensed under a regulatory law or CIMA registered investment funds;
- the introduction of the requirement for CIMA registered investment funds to appoint a beneficial ownership principal point of contact in the Cayman Islands; and
- changes to the:
  - o definition of beneficial owner; and
  - o information required to be maintained for each beneficial owner.

For more information, see our update: [Changes to the Cayman Islands beneficial ownership regime – what you need to know](#).

The legislation is anticipated to be implemented gradually in phases. We understand that the Ministry of Financial Services and Commerce is actively preparing supplementary regulations and guidance to accompany the legislation, which will be subject industry stakeholder consultation once prepared.

### 13. Update: CIMA regulated fund filings

On 1 September 2023, CIMA released a [General Industry Notice](#) outlining a known system issue affecting the filing of audited financial statements and the fund annual return for regulated funds with the financial year ending 31 December 2022.

For more information, see our [Update: CIMA regulated fund filings](#).

# Quick Fire Updates

## 14. Changes to CSX CUSIP-ISIN fees

On 2 September 2023, the Cayman Islands Stock Exchange (CSX) issued [notification](#) of changes to its CUSIP-ISIN fees with effect from **1 October 2023** as follows:

Request type	Current fee	New fee
New CUSIP-ISIN	US\$200	US\$300
Temporary counter CUSIP-ISIN	US\$100	US\$300
Change of name / Name amendments	US\$200	US\$300
CUSIP-ISIN amendments	None	US\$200

## 15. Supervisory circular – Review of TCSPs AMLR Compliance – Sanctions Screening

CIMA issued a [Supervisory Circular](#) on 27 July 2023 setting out the deficiencies it identified in relation to targeted financial sanctions (TFS) compliance by the 23 trust and corporate services providers (TCSPs) it reviewed during onsite inspections in 2022.

Overall, the CIMA noted that compliance by TCSPs has improved since the previous 2021 review. In particular, progress has been made in applying TFS screening measures in relation to the implementation of anti-money laundering/countering the financing of terrorism/countering proliferation financing (AML/CFT) and TFS policies and procedures. The following points of improvement were highlighted:

- **Adequacy of policies for TFS screening at onboarding:** In 2022, 78% of the TCSPs inspected had AML/CFT and TFS policies and procedures that adequately provided for TFS screening at client onboarding. This compares to 63% in 2021.
- **Adequacy of policies for ongoing monitoring and TFS screening:** In 2022, 91% of the TCSPs had AML/CFT and TFS policies and procedures which adequately provided for ongoing monitoring of customers and transactions against the TFS lists. This compares to 89% in 2021.
- **Overall effectiveness of implementation:** In 2022, 30% of the TCSPs inspected were effectively implementing their TFS screening policies and procedures across all client files reviewed. The remaining 70% had at least one client file with weaknesses around TFS screening of clients (and their related parties) at onboarding or on a periodic basis. This compares with 26% and 74% in 2021, respectively.
- **Periodic reviews were not conducted in a timely manner, in accordance with the client's business and risk profile:** In 2022, 1% of the files reviewed showed instances where periodic reviews of clients and principal parties were not performed in a timely manner, and in accordance with the client's business and risk profile. This compares with 14% in 2021.
- **TFS screening results not documented on client files:** In 2022, 6% of client files showed instances where the TCSPs were

screening their clients and associated parties, against relevant TFS lists, but the results were not documented or retained in the client files. This compares with 11% in 2021.

- **TFS screening not performed at client onboarding:** In 2022, 10% of the client files reviewed showed instances where at least one client, or an associated party, was not screened during the client onboarding process and subsequently screened after the business relationships were established. This compares with 14% in 2021.

However, improvements were not seen in the following areas:

- **TFS screening not documented for at least one client or associated parties:** 16% of the client files reviewed showed instances where the client or its associated parties, such as beneficial owners, directors, signatories etc, were not screened against applicable TFS lists during the onboarding process or on a periodic basis. This compares with 15% in 2021.
- **Clearing or resolving alerts not documented:** 5% of the client files lacked documentation to show the measures taken by TCSPs to resolve positive and/or false positive alerts flagged by TFS screening systems. In 2021, 1% of the client files indicated this weakness.
- **TFS screening not conducted through ongoing monitoring or periodic review:** 12% of the client files revealed instances where the TCSPs did not screen the clients, or associated parties, against relevant TFS lists as part of their client file review/ongoing monitoring procedures or whenever there was an update to the TFS lists. This compares with 5% in 2021.

The circular provides that CIMA will continue to take prompt and robust steps to remedy TFS non-compliance by TCSPs, including issuing requirements and, in some cases, initiating enforcement action. TCSPs subject to requirements are required to remediate within the timeframes prescribed by CIMA.

CIMA requires all financial services providers, including TCSPs, to take note of the deficiencies set out in the circular to ensure that their TFS compliance framework, including screening systems and controls, are reviewed and updated periodically to remain compliant with their TFS obligations as set out in the Anti-Money Laundering Regulations (as amended) and the Guidance Notes.

## 16. Latest edition of The Anchor

CIMA has published an August 2023 edition of their AML/CFT newsletter, [The Anchor](#). This edition covers:

- Cayman's progress in relation to the FATF Grey List;
- Money laundering risk in the art and antiquities market (including red flag indicators to help identify suspicious activity); and
- Sanctions and trust services providers.

# Quick Fire Updates

## 17. Rule and Statement of Guidance for licensees conducting the business of company management

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On 31 August 2023, CIMA issued a [Rule and Statement of Guidance](#) on the nature, accessibility, and retention of records for licensees conducting the business of company management under the Companies Management Act (as amended). The Rule and Statement of Guidance will come into force on **1 April 2024**.

## 18. Companies (Amendment of Schedule 4) Order 2023

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The [Companies \(Amendment of Schedule 4\) Order, 2023](#) was gazetted on 19 July 2023 and came into force immediately to replace the list of approved stock exchanges in Schedule 4 of the Companies Act (2023 Revision).

## 19. Mourant Guides and Updates

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

- [Changes to the Cayman Islands beneficial ownership regime – what you need to know](#)
- [Cayman Islands regulated funds – CIMA regulatory measures effective October 2023](#)
- [Cayman Islands funds - CIMA deregistration process timeline reminder](#)
- [Update: CIMA regulated fund filings](#)
- [The Common Reporting Standard and the Cayman Islands – why it is more important than ever for Cayman financial institutions to get it right](#)
- [Navigating a return of funds to shareholders of a Cayman Islands exempted company](#)
- [Cayman Islands Exempted Limited Partnerships](#)

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