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# Regulatory Update

Caribbean – Q4 2024

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# Quick Fire Updates

## BVI UPDATES

### 1. Amendments to the BVI Business Companies Act

The BVI Business Companies (Amendment) Act, 2024 (the **Amendment Act**) was gazetted on 26 September 2024 but is not yet in force, although it is expected to come into force imminently.

Once in force, the key changes to the BVI Business Companies Act, Revised Edition 2020 will include the following:

- every company will be required to keep a register of members and, save for certain exceptions, file a copy with the BVI Registrar of Corporate Affairs (the **Registrar**);
- a company will also be required to file with the Registrar certain information in relation to any 'nominee shareholder', if applicable;
- every company will be required to collect, keep and maintain adequate and up to date beneficial ownership information which, save for certain exceptions, must be filed with the Registrar within 30 days of incorporation;
- the period within which a company's registered agent (**RA**) is required to appoint the company's first director(s) will be reduced from 6 months to 15 days;
- the initial copy of the register of directors will be required to be filed with the Registrar within 15 days of appointment of the first director(s);
- an application to register a foreign company in the BVI will need to contain additional information, such as the registered office address in its country of incorporation and a list of members as at the date of application;
- the period of written notice which a foreign company's RA needs to give before resigning from that role will be increased from 30 days to 60 days;
- the conditions for restoration of struck off and dissolved companies will be streamlined to make it easier for creditors and other persons to apply to restore such companies to the Register of Companies;
- the validity of a certificate of good standing issued by the Registrar will be restricted to a specified period;
- an obligation will be placed on companies to cooperate with competent authorities in the performance of their statutory duties; and
- the penalties for late payment of fees or late filings will be increased, with the framework for penalties to be streamlined generally.

Existing companies will be required to comply with the requirements to file their register of members, nominee shareholder information (if applicable) and beneficial ownership information within 6 months of the Amendment Act coming into force. An existing company which has already opted to file its register of members prior to this date will not be required to file another copy of the register of members (unless the previously filed copy does not contain all of the required information).

For further details of the changes, please see our Update: [Changes to the BVI business companies regime introduced.](#)

### 2. Beneficial Ownership Secure Search System Act amendments

The **Beneficial Ownership Secure Search System (Amendment) Act, 2024** came into force on 24 July 2024, making the following changes to economic substance reporting requirements under the Beneficial Ownership Secure Search System Act, Revised Edition 2020 for all financial periods beginning on or after **1 January 2025**:

- for any corporate and legal entity (**CLE**) carrying on a relevant activity and which does not claim to be outside of the scope of the economic substance requirements due to non-residency - the requirement to provide the type of mobile income is removed and a requirement to provide the total annual gross income of the CLE is added, together with other clarifications;
- for any CLE carrying on intellectual property business and which does not claim to be outside of the scope of the economic substance requirements due to non-residency - a requirement to provide the type of gross income in relation to the relevant activity is added; and
- for any CLE carrying on holding business and which does not claim to be outside of the scope of the economic substance requirements due to non-residency - where the activities of the CLE are 'active' (as opposed to passive), requirements to provide the total amount of expenditure incurred in relation to the relevant activity generally and the total amount of expenditure incurred in relation to the relevant activity in the BVI are added.

Additional minor changes and clarifications were also made to ensure compliance with international standards.

### 3. Amendments to the AML Regulations

The **Anti-money Laundering (Amendment) Regulations, 2024** (the **Amendment Regulations**) were gazetted on 6 September 2024 but are not yet in force.

Once in force, the Amendment Regulations will amend the provisions of the Anti-money Laundering Regulations, Revised Edition 2020 (the **AML Regulations**) in relation to the appointment of a money laundering reporting officer (**MLRO**) by introducing a new requirement for an MLRO to be approved by:

- the Financial Investigation Agency (**FIA**) - if the relevant person is a designated non-financial business or profession (**DNFBP**) or non-profit organisation (**NPO**) supervised by the FIA; or
- the BVI Financial Services Commission (**FSC**) - if the relevant person is regulated by the FSC (unless approval is not required under any enactment).

The FIA and FSC will also have the power to suspend or withdraw the approval of an MLRO. Subject to this, and upon the Amendment Regulations coming into force, any current MLRO will continue to hold office as if their appointment was approved in accordance with the Amendment Regulations.

## 4. Amendments to the AML Code

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The [Anti-Money Laundering and Terrorist Financing \(Amendment\) Code of Practice, 2024](#) was gazetted in the BVI on 10 September 2024 but is not yet in force.

The amendments to the Anti-Money Laundering and Terrorist Financing Code of Practice, Revised Edition 2020 (the **AML Code**) align with amendments to the AML Regulations, which will come into force at the same time.

Once in force, the amendments to the AML Code will require an entity or professional to:

- notify the FIA or the FSC, as applicable, within 14 days of its MLRO ceasing to act; and
- submit an application to the FIA or the FSC, as applicable, for the appointment of a new MLRO within 21 days after the date the MLRO ceased to hold such office, in accordance with the provisions of the AML Regulations.

Where an entity has three or less employees, the entity may apply for a director (or equivalent) or other senior officer of the entity to be appointed as MLRO. Additionally, where a relevant person is a professional, they may apply to be appointed as MLRO. In either case, it must be demonstrated that the individual to be appointed is appropriately qualified in accordance with the AML Regulations and can effectively carry out all the functions of an MLRO, in addition to their responsibilities as director (or equivalent) or other senior officer of the entity

The AML Code will also be amended to provide that the group wide policies, procedures and controls which financial groups are required to maintain (in relation to establishing internal systems and controls, effecting customer due diligence measures, record keeping requirements and employee training), must cover:

- the compliance function and review programme, together with the designation of an individual at senior management level for managing compliance;
- assessment of the competency and probity of employees at the time of recruitment and on an on-going basis;
- the provision of appropriate and periodic training, together with ongoing employee training; and
- an independent audit function that is adequately resourced to test compliance.

## 5. Industry circular – Filing of annual returns

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The FSC issued an [Industry circular](#) on 26 September 2024, in relation to the filing of annual returns. For financial periods commencing after 1 January 2023, every company is required to file an annual financial return with its RA within a period of nine months after the end of the company's financial year. The deadline for the first filing of annual returns (ie, for companies with a 31 December financial year end) was **30 September 2024**.

However, the FSC have confirmed that, given the logistical issues of ensuring full compliance within the established deadline, and until notified otherwise, neither the FSC nor the Registrar envisages taking any enforcement action against:

- any company for failure to comply with the current established deadline of filing first annual returns; or
- a registered agent for failure to provide the required notification to the Registrar (ie, notification of failure by a company to file its annual return).

## 6. Incoming amendments to financial services legislation

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The following legislation was gazetted on 26 September 2024, but is not yet in force:

### • **Banks and Trust Companies (Amendment) Act 2024**

Under this Amendment Act, the definition of 'trust business' in the Banks and Trust Companies Act, Revised Edition 2020 will be extended to cover a trust and corporate services provider acting as or arranging for another person to act as a professional trustee, protector or administrator of a trust or settlement *'or performing the equivalent function for another form of legal arrangement'*.

Additionally, if an applicant for a banking licence has made a written undertaking to provide the FSC with its policy of deposit insurance issued in accordance with the Virgin Islands Deposit Insurance Act (**VIDIA**), this policy will be required to be provided within 6 months of issue of the banking licence. This is designed to ensure that the domestic banks, including any new ones, become part of the BVI's deposit insurance scheme under the VIDIA.

### • **Insolvency (Amendment) Act 2024**

This Amendment Act will amend the Insolvency Act, Revised Edition 2020 to expand the prescribed circumstances enabling the FSC to make an application for the liquidation of a company in line with the Mutual Evaluation Report (**MER**) recommendation. This is in relation to both incorporated companies and registered foreign companies.

In addition, the FSC will be empowered to make an application to appoint a liquidator where it considers such an application to be in the best interest of the BVI's financial services industry or generally to be in the public interest.

### • **Insurance (Amendment) Act 2024**

In order to fully comply with Financial Action Task Force (**FATF**) Recommendation 26, this Amendment Act will amend the Insurance Act, Revised Edition 2020 to ensure that, in relation to a foreign insurer, whenever the foreign insurer wishes to effect a change in the significant interest or controlling interest of the insurer, the foreign insurer must first secure the approval of the FSC. This aims to ensure that no criminal or criminal's associate can have a significant interest or controlling interest in a foreign insurer.

Provision has also been made to require a foreign insurer to notify the FSC of any other change in the interest holding of the insurer which does not qualify as a significant interest or controlling interest.

## • Proliferation Financing (Prohibition) (Amendment) Act 2024

This Amendment Act will amend the Proliferation Financing (Prohibition) Act, 2021 to:

- make the liability identified in sections 15 and 16 (in relation to prohibiting dealing in or making available, assets owned, controlled or held by or on behalf or for the benefit of a designated person or entity) a strict liability offence;
- remove the financial threshold of \$10,000 identified in section 37(1)(a) and (c) with respect to the compulsory reporting of financial transactions involving a designated country person or entity, effectively making it a requirement to report any transaction involving any amount concerning a designated country person or entity;
- place an obligation on any person who knows of any dealing or attempted dealing in an asset or the making available of an asset to make a report to the FIA; and
- better streamline the FIA's power to issue guidelines and create a new provision empowering the FIA to issue guidelines with respect to proliferation financing matters generally.

## • Trustee (Amendment) Act 2024

As a result of the MER recommendations, this Amendment Act will amend the Trustee Act, Revised Edition 2020 as follows:

- section 92A will be amended to introduce new definitions for 'beneficial owner' and 'beneficial owner information';
- a new section 92B will be introduced to place an obligation on trustees to:
  - collect, keep and maintain beneficial ownership information in relation to trusts, which is accurate and up to date;
  - take reasonable steps to verify the identities of beneficial owners and their beneficial ownership information to ensure that they are adequate, accurate and up to date; and
  - update such information in a timely manner where any change occurs in the beneficial owner or the information relative to a beneficial owner or a beneficial owner's interest in a trust.; and
- the obligations placed on a trustee under the new section 92B will not apply in circumstances where professional legal privilege applies.

## 7. Amendment of Securities and Investment Business Act

The Securities and Investment Business (Amendment of Schedule 1) Order, 2024 (the **Order**) was gazetted on 5 September 2024 but is not yet in force.

When brought into force, the Order will include a new paragraph 7A in Schedule 1 (*Investments*) to include 'contracts to exchange

one currency for another"(ie, foreign exchange instruments) within the definition of 'investment'.

## 8. AML/CFT/CPF guide for the investment business sector

The FSC published an [Investment Business Guide to the Prevention of Money Laundering, Terrorist Financing and Proliferation Financing](#) on 3 September 2024 to guide entities within the investment business sector on how to meet their relevant AML/CFT/CPF obligations.

The guide sets out the need for investment business service providers to monitor risks associated with their business, conduct institutional risk assessments and highlights, among other things, the following matters to be taken into account when conducting investment business:

- understanding beneficial ownership and control;
- customer due diligence (**CDD**) and applying CDD measures;
- determining when to apply simplified or enhanced CDD;
- the impact of reliance on third parties or intermediaries;
- the need for:
  - ongoing CDD once a business relationship is established;
  - transaction monitoring; and
  - record keeping.

## 9. VASP Travel Rule Guidance

The FSC has issued [VASP Travel Rule Guidance](#) to provide clarification on how BVI virtual assets services providers (**VASPs**) should apply the FATF Travel Rule in conducting their operations and when sending and receiving virtual assets. The new guidance highlights the requirement to ensure full originator and beneficiary information is sent and received, together with the importance of ensuring compliance with the AML Regulations and AML Code, along with other relevant laws and regulations applicable to VASPs.

The guidance also provides that VASPs should ensure that they are able to identify beneficial owners and the need to adopt a risk-based approach when dealing with transfers to and from un-hosted wallets.

## 10. FSC Newsletter: Quarter 3 of 2024

The FSC published the latest edition of its [Quarterly Newsletter](#) on 1 October 2024. This edition covers:

- the VASP Travel Rule Guidance (detailed above);
- the AML/CFT/CPF guide for the investment business sector (detailed above);
- details of the new Chairman of the FSC Board of Commissioners and new Head of Legal of the FSC; and
- the Authorisation and Supervision Division calendar of upcoming filings and requirements deadlines.

## 11. FSC Statistical Bulletin Q2 2024

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The FSC has issued its [Q2 Statistical Bulletin](#) for 2024 providing statistics information and analysis on financial services activities for the relevant period.

## 12. NPO Terrorist Financing Risk Assessment

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In keeping with FATF Standards, the FIA published the [Terrorist Financing Risk Assessment](#) for the NPO sector in August 2024 providing greater insight on the sector in the BVI and key recommendations to remedy any deficiencies identified within the BVI CFT framework.

For NPOs, these recommendations include:

- implementing relevant CFT policies and procedures to mitigate the risk of terrorist financing (TF) abuse;
- completing and promptly submitting any risk assessment questionnaire received from the FIA; and
- ensuring the submission of their annual financial statements to the NPO Board and the FIA in a timely manner.

## 13. Guidance on best practices to protect NPOs from TF misuse

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Following the Government's recent assessment of the TF risk in the NPO sector, on 10 September 2024, the FIA issued [Guidance Notes](#) to NPOs on best practices to adopt to protect them from being misused for TF purposes.

The new guidance highlights the importance of having effective prevention measures including:

- carrying out a risk assessment in relation to their activities;
- establishing, maintaining and implementing robust internal policies, procedures and controls;
- undertaking due diligence on employees, donors and funders, particularly if they are not in the BVI;
- conducting appropriate targeted screening of beneficial owners of foreign partners/staff, including sanctions screening; and
- using secure payment channels (eg, licensed banks and money services businesses) to transfer funds.

## 14. Virgin Islands Shipping and Maritime Authority

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On 15 August 2024, the Virgin Islands Shipping Registry transitioned to the Virgin Islands Shipping and Maritime Authority pursuant to the [Virgin Islands Shipping and Maritime Authority Act, 2023](#).

## 15. TCSP outreach

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The FSC issued an [Industry Circular](#) on 30 September 2024 encouraging all trust and corporate service providers (TCSPs) to participate in an virtual outreach session being facilitated by the FIA on **18 October 2024** in relation to suspicious activities and transactions, red flags and reporting.

## 16. Extended list of Relevant Foreign Countries for the purposes of Part XIX Insolvency Act

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On 18 September 2024, the FSC published a [Notice](#) extending the list of the countries that are entitled to case-by-case assistance pursuant to Part XIX of the Insolvency Act, Revised Edition 2020. The additional countries listed are:

- Bahamas
- Barbados
- Belize
- Bermuda
- Cayman Islands
- Guernsey
- Guyana
- Ireland
- Isle of Man
- Jamaica
- Member States and Territories within the OECS
- Nigeria
- Singapore
- Trinidad and Tobago
- Turks and Caicos Islands

## 17. Inaugural BVI Mourant Regulatory Conference

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Mourant will be hosting its first BVI Regulatory Conference on Tuesday, **15 October 2024** at Maria's By The Sea Hotel & Restaurant, Road Town. We will discuss current and upcoming issues affecting the industry, including the 4th and 5th Round Mutual Evaluations, AML/CFT and international exchange of information and transparency (including CRS and economic substance). Our confirmed speakers include leading experts from the Ministry of Financial Services, Labour and Trade, the BVI ITA and Mourant's regulatory, governance and consulting professionals.

If you are interested in attending the Conference, please visit this [link](#) to register your interest.

## 18. Mourant Guides and Updates

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

- [Changes to the BVI business companies regime introduced](#)
- [The sanctions regime in the British Virgin Islands](#)
- [CRS in the BVI – Obligations and enforcement](#)
- [Antecedent Transactions in the BVI and Cayman Islands: a beginner's guide](#)

## CAYMAN UPDATES

### 19. Changes to the beneficial ownership regime in force

The [Beneficial Ownership Transparency Act, 2023 \(BOT Act\)](#) and the [Beneficial Ownership Transparency Regulations, 2024](#) came into force on 31 July 2024., amending and consolidating the Cayman Islands beneficial ownership regime (which was previously found in multiple pieces of entity-specific legislation). The Cayman Islands Ministry of Financial Services and Commerce has confirmed that there will be no enforcement of the new regime until **1 January 2025**.

The key amendments include:

- the expansion of the regime to include limited partnerships and exempted limited partnerships, together with companies, foundation companies, limited liability companies and limited liability partnerships;
- the provision of an alternative route to compliance for entities listed on specified stock exchanges, persons licensed under a regulatory law or investment funds regulated by the Cayman Islands Monetary Authority (CIMA);
- the introduction of the option for CIMA-registered investment funds to appoint a beneficial ownership contact person who is either a licensed fund administrator or another person licensed or registered with CIMA (instead of filing the fund's beneficial ownership information in a beneficial ownership register); and
- changes to:
  - the definition of beneficial owner; and
  - the information required to be maintained for each beneficial owner.

The Competent Authority for Beneficial Ownership has issued [Guidance on complying with the Beneficial Ownership Obligations in the Cayman Islands](#) to assist beneficial owners, legal persons and corporate service providers in complying with their respective obligations under the BOT Act.

For further information, please see our Update on [Changes to the Cayman Islands beneficial ownership regime in force](#) and, for assistance in establishing how the regime applies to your business, our [Cayman Islands beneficial ownership regime – Steps guide](#).

### 20. Proceeds of Crime Act amendments reminder

The remaining provisions of the [Proceeds of Crime \(Amendment\) Act 2023](#) will come into force on **2 January 2025**.

These provisions relate to sections 133 (*Concealing*), 134 (*Arrangements*) and 135 (*Acquisition, use and possession*) of the Proceeds of Crime Act (2020 Revision), which create various money laundering offences (including concealing, arranging and possession of criminal property). Once in force, the wording in these provisions will be clarified to provide that a person does not commit an offence where they make a disclosure to the Financial Reporting Authority (FRA) and have the consent of the FRA to commit the act. However, this does not apply to the person who

committed or was a party to the act from which the property derives.

Sections 133 and 135 will also be amended to remove references to the defence of intending to make a disclosure to a nominated officer.

### 21. Amendments to the Perpetuities Act

The [Perpetuities \(Amendment\) Act, 2024](#) came into force on 22 August 2024, removing the mandatory perpetuity period of 150 years for many existing and future trusts. These amendments are in line with several other relevant financial services centres.

For further details, please see our client update: [Cayman Permits Disapplication of Rule Against Perpetuities](#).

### 22. CIMA's 2023 Annual Report

CIMA released its [2023 Annual Report](#) on 12 September 2024. Some notable milestones from 2023 were:

- the removal of the Cayman Islands from the FATF grey list;
- the completion of an internal organisational review recommending changes to maximise efficient and effective operations, which will be rolled-out over the coming 24 months; and
- a dedicated division for the supervision of virtual asset service providers becoming operational.

The Annual Report also covers the strength and stability of Cayman's financial services industry during the period,

### 23. Mourant Guides and Updates

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

- [Cayman Islands beneficial ownership regime – Steps guide](#)
- [The Cayman Islands beneficial ownership regime](#)
- [Changes to the Cayman Islands beneficial ownership regime in force](#)
- [Cayman Island exempted companies - Directors' duties and liabilities](#)
- [A quick guide to directors' duties in the Cayman Islands](#)
- [Antecedent Transactions in the BVI and Cayman Islands: a beginner's guide](#)
- [An introduction to the Cayman AML/CFT/CPF regime](#)
- [Cayman Islands foundation companies - The ideal wrapper for DAOs or crypto trading](#)
- [Commercial flight operations for Cayman Islands registered aircraft](#)
- [Cayman Permits Disapplication of Rule Against Perpetuities](#)
- ['Insolvency deepening' activity – Risk for Cayman Islands Directors](#)

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