

## Campbells Regulatory Update – Q3 2022

30 September 2022

This update provides an overview of the main legal developments in the Cayman Islands and the British Virgin Islands (“**BVI**”) over the last quarter.

For further information please contact your usual Campbells contact or one of the contacts provided at the end of this update.



# Cayman Islands

## 1. Companies (Amendment) Act, 2021

On 31 August 2022, the Companies (Amendment) Act, 2021 came into force (the “**Amendment Act**”). The purpose of the Amendment Act is to allow for the restructuring of a company under the supervision of a restructuring officer and provide for a stay on creditors actions when a company is undergoing a restructuring. For further information please see our client advisory available [here](#).

To support the Amendment Act, the Insolvency Rules Committee, chaired by the Chief Justice, the Hon. Anthony Smellie, QC, prepared amendments to the Companies Winding Up Rules, 2018. These amendments, which do not need Parliamentary process, came into force simultaneously with the Act.

## 2. The Russia (Sanctions) (Overseas Territories) (Amendment) (No.2) Order 2022

On 10 August 2022, the Russia (Sanctions) (Overseas Territories) (Amendment) (No.2) Order, 2022 was gazetted and made in exercise of legislative powers under the UK Sanctions and Anti-Money Laundering Act 2018. It amends the Russia (Sanctions) (Overseas Territories) Order 2020, to give effect in the relevant British overseas territories (including the Cayman Islands and the BVI) to the changes made to the Russia sanctions regime by the Russia (Sanctions) (EU Exit) (Amendment) (No 8) Regulations 2022. It came into force on 20 July 2022.

## 3. Limited Liability Companies (Amendment) Bill, 2022

On 12 August 2022, the Limited Liability Companies (Amendment) Bill, 2022 was gazetted. The purpose of the Bill is to clarify that existing limited liability companies would no longer have to file a certificate of amendment on membership changes with the Companies Registrar. The amendment also would require limited liability companies to maintain, at their registered offices, the names and addresses of their members in their register of members, and the nature of their voting rights; and to provide this information upon demand to the Companies Registrar.

Finally, because penalties for failure to provide beneficial ownership information are now covered in the Cayman Islands' beneficial ownership administrative fines regime, the Bill proposes to remove the penalties provision in the current Limited Liability Companies Act, thereby removing the duplication.

## 4. Updates to Economic Substance Guidance Notes

In July 2022, the Department for International Tax Cooperation published version 3.2 of the Economic Substance Guidance Notes. The only substantive change to the Guidance Notes is in respect of the supporting documents required for entities claiming to be tax resident outside the Cayman Islands which is now clarified to include: (i) certificates or letters issued by the competent tax authority of the other jurisdiction; (ii) tax assessments, demands, or evidence of payment issued by the competent tax authority of the other jurisdiction; (iii) tax returns submitted to the competent tax authority of the other jurisdiction; or (iv) rulings issued by the competent tax authority of the other jurisdiction.

The updated Guidance Notes also provide that where an entity claims to be tax resident in the following jurisdictions it will not be accepted, given the lack of a corporate income tax system: Anguilla, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Turks and Caicos Islands, and the United Arab Emirates.

## 5. Cancellation of Licence or Certificate of Registration for Regulated Mutual Funds and Regulated Private Funds

In August 2022, the Cayman Islands Monetary Authority (“**CIMA**”) updated its Rule on the Cancellation of Licenses or Certificates of Registration for Regulated Mutual Funds and Registered Private Funds regarding their deregistration with CIMA at the end of the life of the fund or, in certain circumstances, where their regulatory status has changed.

For further information please see our client advisory available [here](#).

## 6. Dividend Payments and Distributions

On 28 July 2022, CIMA issued a supervisory circular reminding all licensees, building societies, cooperative societies and development banks incorporated and/or regulated under the Bank & Trust Companies Act (2021 Revision), the Money Services Act (2020 Revision), the Building Societies Act (2020 Revision), the Cooperative Societies Act (2020 Revision) and Development Bank Act (2018 Revision) (collectively the “**Acts**”) to notify and/or seek approval from CIMA prior to payment of dividends, capital repayments or distributions to their shareholders, members and parent companies and that all dividend and distribution notifications and/or approval requests should be accompanied with a calculation of the pre and post dividend capital adequacy ratio and net worth calculation as defined in the Acts (if applicable), pre and post dividend liquidity and leverage ratio calculations (if applicable), Board of Director’s resolution approving the dividend payment and confirmation that the Licensees, building society, credit union or development bank (as applicable) will continue to maintain the minimum required capital adequacy ratio, adequate liquidity and leverage ratios (if applicable), as well as adequate loan loss and other provisions to support its business needs and objectives.

## 7. Key Findings of Registered Persons from on-site Inspections

On 12 July 2022, CIMA published a circular setting out the findings of CIMA from on-site inspections conducted on Registered Persons under the Securities Investment Business Act from the period 24 October 2020 to 31 December 2021.

CIMA identified key areas of weaknesses across AML, countering the financing of terrorism, countering proliferation financing and targeted financial sanctions (together, “**AML/CFT**”) compliance.

Further information is available [here](#).

## 8. Climate Change, Environmental, Social and Governance and Sustainability (“ESG”)

On 11 July 2022, CIMA issued a supervisory circular concerning ESG. In particular, that climate related risks are a material risk consideration for the insurance sector due to the direct impact on insurability of policyholders’ assets as well as insurer’s operations, investment objectives and reputation and as such, there is a growing need for insurers to better understand the impact of related climate and ESG risks in their risk management and corporate governance frameworks.

Further information is available [here](#).

## 9. CIMA Consultations

In August 2022, CIMA issued number of public consultations (which closed for comment during the course of September), as follows:

### A. Rules and Statement of Guidance on Internal Controls for Regulated Entities

In 2007, CIMA issued Rule on Internal Controls - General for all Licensees (“**the 2007 Rule on Internal Controls**”). The 2007 Rule on Internal Controls provides that a licensee must establish, implement, and maintain internal controls, strategies, policies, and procedures appropriate for the size, complexity, and nature of its activities. It also requires that such controls, strategies, policies, and procedures be approved by the licensee’s board of directors; and be monitored periodically.

CIMA also issued various sector specific Statements of Guidance (“**SOGs**”) to assist licensees in implementing effective internal controls required by the 2007 Rule on Internal Controls. The current Rule and SOGs on internal controls (together referred to as “**current measures**”) are largely based on the Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of Treadway Commission (“**COSO**”) in 1992 (the “**Original Framework**”).

In May 2013, COSO issued the revised Internal Control - Integrated Framework. This included enhancements regarding changes in business and operating environments occurring since the inception of the Original Framework.

These changes include:

- (1) expanded expectations for governance oversight over internal controls;
- (2) increased globalization of markets and operations;
- (3) changes and greater complexities of business operations;
- (4) greater level of demands and complexities in laws, rules, regulations and standards;
- (5) expectations for competencies and accountabilities in respect of internal controls;
- (6) more emphasis on the use of, and reliance on, evolving technologies; and
- (7) increased expectations in relation to preventing and detecting fraud

which are now reflected in the revised Rules and Statement of Guidance on Internal Controls for Regulated Entities.

### B. Rules and Statement of Guidance on Corporate Governance for Regulated Entities

Currently, the corporate governance supervisory and regulatory framework consists of three (3) existing regulatory measures.

These are the: (i) Rule on Corporate Governance for Insurers (2016); (ii) Statement of Guidance on Corporate Governance (2016); and (iii) Statement of Guidance on Corporate Governance for Regulated Mutual Funds (2013).

CIMA reviewed the current corporate governance supervisory and regulatory framework to identify and implement areas for enhancement based on the following:

- Lack of supervisory enforceability of corporate governance statements of guidance.
- Inconsistent application of binding corporate governance rules across regulated sectors.
- Scope of applicability of the current corporate governance measures do not extend to all regulated entities including, Securities Investment Business Act Regulated Persons, Virtual Asset Service Providers Registrants, Private Funds, Money Services Businesses and Private Trust Companies.
- Alignment with international corporate governance principles and standards.

Consequent on the above, CIMA is proposing to issue a new Rule on Corporate Governance for Regulated Entities which will be applicable to all entities regulated by CIMA and an industry specific SOG on Corporate Governance for Mutual Funds and Private Funds. The proposed Rule and SOG will replace the existing corporate governance regulatory measures.

## 10. Regulatory Calendar

Please click [here](#) to access our Cayman Islands Key Annual Dates Calendar (which provides key regulatory filing dates for clients).

# British Virgin Islands (BVI)

## 1. Amendments to the BVI Business Companies Act

The BVI Business Companies Act and the BVI Business Companies Regulations were amended in August 2022 by the BVI Business Companies (Amendment) Act, 2022 and the BVI Business Companies (Amendment) Regulations, 2022 respectively. The changes are due to come into force on 1 January 2023 and we have considered each of the substantive amendments in our client advisory available [here](#).

## 2. Amendments to the BVI Anti-Money Laundering Regime

In August 2022, the BVI amended its Anti-Money Laundering Regulations and Anti-Money Laundering and Terrorist Financing Code of Practice pursuant to the Anti-money Laundering (Amendment) Regulations, 2022 and the Anti-Money Laundering and Terrorist Financing (Amendment) Code of Practice, 2022 respectively.

The amendments ensure the BVI's continued compliance with evolving international standards and also provide that, with effect from 1 December 2022, all BVI entities that fall within the definition of a virtual asset service provider will be required to comply in full with BVI anti-money laundering, counter-terrorist financing and anti-proliferation finance legislation. Further information is available in our client advisory available [here](#).

## 3. VASP Consultation

On 9 September 2022, the proposed Virtual Asset Service Providers Act, 2022 (the "**VASP Act**") was circulated for consultation. and was introduced to implement the Financial Action Task Force recommendations in relation to the oversight of VASPs, demonstrating the BVI's continued commitment to maintaining international standards. The VASP Act, once finalised and brought into force, will create a new legal framework and licensing regime for BVI entities that fall within the definition of a VASP. The BVI Financial Services Commission (the "**FSC**") will be the principal authority with regulatory oversight of the VASP Act. The consultation closed on 23 September 2022.

## 4. International Tax Authority (Administrative Penalties) Regulations, 2022

On 4 August 2022, the International Tax Authority (Administrative Penalties) Regulations, 2022 were gazetted and introduced a power for the International Tax Authority (the "**ITA**") to impose administrative penalties where it considers that a person or legal entity has contravened a provision of the International Tax Authority Act (Revised Edition, 2020), the Mutual Legal Assistance Act, the Regulatory Code, Revised Edition 2020, or any directive issued by the ITA. The Regulations set out a prescribed process in respect of the procedure to be followed by the ITA. This includes determination of the appropriate penalty and an appeal process.

## 5. BVI FSC outlines priorities for its new Enforcement Philosophy

In September 2022, the FSC published its Enforcement Philosophy which sets out the FSC's approach to enforcement, the principles and standards that underpin the FSC's enforcement actions, and also outlines its new enforcement priorities. The new Enforcement philosophy comes into effect on 1 October 2022 and can be viewed [here](#).

## 6. BVI Proliferation Financing Risk Assessment 2022

On 9 September 2022, the BVI published the Virgin Islands Proliferation Financing Risk Assessment 2022 available [here](#). It takes a critical look at the risk of proliferation financing to the BVI based on identified threats within key areas of the economy and the vulnerabilities associated with those areas that if left unchecked, would increase the territory's Proliferation Financing risk.

## 7. BVI FSC Consolidated Supervision Policy

On 19 July 2022, the FSC published its Consolidated Supervision Policy available [here](#). The objective of the Policy is to ensure that the FSC has mechanisms in place to identify, assess and mitigate the risks of a licensee which forms part of a group. The FSC seeks to ensure that where it acts as home or host supervisor for licensees operating within or outside the BVI that form part of a group structure that such entities are subject to effective consolidated supervision.

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