

## Campbells Regulatory Update – Q1 2023

3 April 2023

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. Update in respect of the Cayman Islands' inclusion on the Financial Action Task Force's ("FATF") list of countries subject to increased monitoring

FATF sets the global regulatory standard for anti-money laundering and terrorist financing ("**AML**"), and it also monitors countries for their compliance with this standard. Among other matters, plenary agendas include determining if countries will be added or removed from FATF's list of countries that, because of deficiencies in their AML regimes, are under increased FATF monitoring.

FATF added the Cayman Islands to this list in February 2021, and required the Cayman Islands to complete three recommended actions in order to be delisted. These three actions were what remained from 63 actions, recommended in March 2019 by the Caribbean Financial Action Task Force ("**CFATF**"), to strengthen the Cayman Island's AML regime. CFATF supports the FATF's global work in the Caribbean region.

Following significant progress last year, FATF confirmed at the October 2022 plenary that the Cayman Islands had only one remaining recommended action to address: Investigations and prosecutions of money-laundering cases.

The FATF plenary was held in Paris, from 20-24 February 2023 and it was confirmed that "for FATF to consider this recommended action as addressed the Cayman Islands must demonstrate, among other things, that those convicted have been sentenced."

Minister Ebanks (Minister of Financial Services and Commerce) said that, in accordance with FATF procedures, the Cayman Islands will provide an update during the FATF Joint Group's review meeting this April, prior to the FATF Plenary in June.

### 2. Russia (Sanctions) (Overseas Territories) (Amendment) (No.4) Order, 2022 and The Russia (Sanctions) (Overseas Territories) (Amendment) Order 2023

On 11 January 2023, the Russia (Sanctions) (Overseas Territories) (Amendment) (No.4) Order, 2022 was gazetted and made in exercise of legislative powers under the 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. 15) Regulations 2022 and the Russia (Sanctions) (EU Exit) (Amendment) (No. 16) Regulations 2022. It came into force on 15 December 2022.

On 15 March 2023, the Russia (Sanctions) (Overseas Territories) (Amendment) Order, 2023 was gazetted and made in exercise of legislative powers under the 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. 17) Regulations 2022 which impose a new restriction in relation to the provision of trust services to designated persons or persons connected with Russia (and associated reporting requirements); add additional services to the existing provisions imposing restrictions relating to professional and business services; and provides for exceptions and licenses relating to the new restrictions introduced by the amendments.

### 3. 2023 Legislative Revisions / Consolidations

The following pieces of consolidated legislation (up to 31 December 2022) have been gazetted over the last quarter:

- (a) Companies Winding Up Rules (2023 Consolidation)
- (b) Companies Act (2023 Revision)
- (c) Beneficial Ownership (Limited Liability Companies) Regulations (2023 Revision)
- (d) Anti-Money Laundering Regulations (2023 Revision)
- (e) Limited Liability Partnership Act (2023 Revision)
- (f) Limited Liability Companies Act (2023 Revision)
- (g) Special Economic Zones Act (2023 Revision)
- (h) Retail Mutual Funds (Japan) Regulations (2023 Revision)

### 4. 2023 Legislative Bills

On 27 March 2023, a number of bills were gazetted to provide for the liability of partnerships, exempted limited partnerships and limited liability partnerships, partners, unincorporated associations and persons concerned in the management or control of unincorporated associations for various offences under certain regulatory laws. This included the:

- (a) Virtual Asset (Service Providers) (Amendment) Bill, 2023
- (b) Securities Investment Business (Amendment) Bill, 2023
- (c) Money Services (Amendment) Bill, 2023
- (d) Insurance (Amendment) Bill, 2023
- (e) Directors Registration and Licensing (Amendment) Bill, 2023
- (f) Companies Management (Amendment) Bill, 2023
- (g) Monetary Authority (Amendment) Bill, 2023

### 5. Accountants Act and Regulations

The Accountants (Amendment) Act, 2022, and regulations that support its provisions came into effect on 1 February 2023.

The Accountants (Amendment) Act is supported by The Accountants (Application for Membership) (Amendment) Regulations, 2023 and The Accountants (Disciplinary) (Amendment) Regulations, 2023. Collectively, they allow the Cayman Islands Institute of Professional Accountants to continue their effective oversight functions of the local practice of accounting.

The Accountants (Quality Assurance) (Amendment) Regulations, 2023 support the local adoption and practice of new international standards for quality management regarding audits, reviews of financial statement, or other assurance or related services engagements and engagement quality reviews.

### 6. Cayman Islands Monetary Authority (“CIMA”) Updates – Private Fund SP Fees to be Returned

On 22 March 2023, CIMA published a notice that, with immediate effect, CIMA will not be collecting annual registration fees on behalf of Segregated Portfolios for private fund Segregated Portfolio Companies. In addition, CIMA will be seeking to refund any such fees paid from 2020 to date, prior to the notice.

CIMA is currently in discussion with the Ministry of Financial Services and Commerce, and it is anticipated that the Private Funds Act and the associated Regulations will be amended, following a broader stakeholder consultation. A statutory based registration fee will be implemented thereafter.

# British Virgin Islands (BVI)

## 1. BVI's inclusion on the EU's list of non-cooperative jurisdictions for tax purposes ("Annex I")

The Council of the European Union ("EU") announced that following a meeting of the EU's Economic and Financial Affairs Council ("ECOFIN"), the BVI has been moved to Annex I effective 14 February 2023.

The rationale for the move is that the BVI was not sufficiently in compliance with the Organisation for Economic Co-operation and Development's ("OECD") standard on exchange of information on request (criterion 1.2 of the list).

The BVI government has recently succeeded in its request for a supplementary review to more accurately reflect its current legislative status following the EU's decision to add the BVI to its list of non-cooperative jurisdictions for tax purposes.

The BVI Government issued a statement highlighting that it had already introduced legislation to address the EU Council's concerns but the legislative changes, which came into effect in January, were not recognised in the most recent OECD peer review rating. The BVI Government immediately requested a supplementary review with a view to having the BVI removed from the list as soon as possible. Permission for the review has been given by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The BVI is confident that a "largely compliant" or "compliant" rating will be given, which would see the BVI removed from the non-compliant list.

## 2. Economic Substance Update

On 24 February 2023, the BVI International Tax Authority ("ITA") published version three of its economic substance rules and explanatory notes (the "Rules").

The Rules make certain updates with respect to a Legal Entity being tax resident outside the BVI, in particular, evidence that the ITA will accept to support that assertion. The Rules also clarify certain points around the term "incidental" for financing and leasing business and "adequate and appropriate" in connection with a Legal Entity being directed and managed in the BVI.

Other updates align the Rules with the amendments made during 2021 to the Economic Substance (Companies and Limited Partnerships) Act and the Beneficial Ownership Secure Search System Act.

## 3. Financial Services (Fees) (Amendment) Regulations, 2023

On 25 January 2023 the Financial Services (Fees) (Amendment) Regulations, 2023 were gazetted and came into force on 1 April 2023. In particular, the amendment regulations contain provisions relating to application and other fees payable the Virtual Assets Service Providers Act, 2022, which came into effect on 1 February 2023.

These Regulations repeal and replace the Schedule to the Financial Services (Fees) Regulations. The new Schedule of Fee Changes is set out [here](#).

## 4. Insolvency (Amendment) Act, 2022, Banks and Trust Companies (Amendment) Act, 2022 and the Financial Services Commission (Amendment) Act, 2022

Following our [Q4 2022 regulatory update](#), the Insolvency (Amendment) Act, 2022, the Banks and Trust Companies (Amendment) Act, 2022 and the Financial Services Commission (Amendment) Act, 2022 were brought into force on 1 March 2023 (together with the Insolvency (Amendment) Rules, 2023 (gazetted on 26 January 2023) and the Insolvency (Amendment) Code of Practice, 2023 (gazetted on 9 February 2023)).

The Insolvency (Amendment) Rules, 2023, complements the Insolvency (Amendment) Act, 2023, in facilitating the role of the Virgin Islands Deposit Insurance Corporation. The Amendment Rules further introduces Part 8A, which outlines the responsibilities of the Registrar upon the completion of liquidation, with respect to striking the name of the company from the Register of Companies or Register for Foreign Companies, respectively and the subsequent dissolution of the company.

The Insolvency (Amendment) Code of Practice, 2023 amends the Insolvency Code of Practice by outlining the residency requirements applicable for a licensed Insolvency Practitioners, pursuant to section 476(1)(a) of the Insolvency Act. In addition, it specifies that the FSC's fit and proper standards will be applied in assessing an application for licensing as an Insolvency Practitioner.

## 5. Virtual Asset Services Providers Act, 2022

Following our [Q4 2022 regulatory update](#), the Virtual Assets Service Providers Act, 2023 was brought into force on 1 February 2023. The BVI Financial Services Commission (the "FSC") has also published [Guidance on the Application for Registration of a Virtual Assets Service Provider](#). In addition, the [Virtual Asset Service Providers Guide to the Prevention of Money Laundering, Terrorist Financing](#) and Proliferation Financing was published on the FSC's website to provide VASPs with additional information to aid in compliance with AML/CFT obligations.

## 6. AML Updates

On 1 March 2023 the Anti-Money Laundering (Amendment) Regulations, 2023 were gazetted and came into force on 8 March 2023. This included amendments to the Anti-Money Laundering Regulations (2020 revision) (as revised) to introduce: (i) a definition of control for beneficial ownership purposes; and (ii) a threshold of less than USD\$1000 (or the equivalent in another currency) for wire transfers that do not require CDD to be undertaken on the applicant for business.

Consequential amendments were made to the Anti-Money Laundering and Terrorist Financing (Amendment) Code of Practice, 2023 which was gazetted on 16 March 2023 and came into force on 17 March 2023.

## 7. CRS Updates

On 15 February 2023, the ITA published its updated Common Reporting Standards lists of Participating Jurisdictions and Reportable Jurisdictions for 2023.

New additions to the CRS list of Participating Jurisdictions include Benin, Burkina Faso, Mauritania, and Rwanda.

New addition to the CRS list of Reportable Jurisdictions include Ghana. Costa Rica has been removed from the CRS list of Reportable Jurisdictions.

The CRS list of Participating Jurisdictions can be found [here](#).

The CRS list of Reportable Jurisdictions can be found [here](#).

## 8. BVI Business Companies (Financial Return) Order, 2023 and BVI Business Companies (Amendment) Act, 2023

On 2 March 2023, the BVI Business Companies (Financial Return) Order, 2023 was gazetted and sets out the form of annual financial return required in accordance with the BVI Business Companies Act (as revised). As expected the form of annual financial return comprises a balance sheet and profit and loss account. Further information in respect of the introduction of the annual financial return is available in this [client advisory](#).

On 21 March 2023, the BVI Business Companies (Amendment) Act, 2023 was gazetted and came into force with effect from 1 January 2023. The amendments provide, amongst other things, that foreign companies maintain a register of their members and keep at the offices of their registered agents in the BVI certain specified documents.

## 9. Regulatory (Amendment) Code, 2023

The Regulatory (Amendment) Code, 2023 was gazetted on 16 March 2023 and makes certain amendments to the FSC's Regulatory Code including, amongst others, to clarify that relevant provisions of the Code will apply to any Virtual Assets Service Provider registered under the Virtual Assets Service Providers Act, 2022.

## Key Contacts



**Simon Thomas**

Partner

[stthomas@campbellslegal.com](mailto:stthomas@campbellslegal.com)

[Unfold more](#)



**Guy Williamson**

Partner

[gwilliamson@campbellslegal.com](mailto:gwilliamson@campbellslegal.com)

[Unfold more](#)