

## Campbells Caribbean Regulatory Update – Q2 2024

23 July 2024

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. Updates on the Cayman Islands Beneficial Ownership Regime – Technical Guidance; Consultation on Regulations and Guidance; and Timing Update

On 15 March 2024, the Cayman Islands Ministry of Financial Services and Commerce (the “**Ministry**”) issued [Technical Guidance](#) for corporate services providers to facilitate changes to internal processes in support of the transition to a new CSV file format which will be used to report beneficial ownership information through the corporate administration platform. The Technical Guidance is accompanied by a [sample CSV file](#) showing the new data fields.

On 30 April 2024, the Ministry issued a public consultation seeking feedback on the draft Beneficial Ownership Transparency Regulations 2024 and accompanying guidance documents. The consultation closed on 14 May 2024.

On 19 May 2024, the Ministry provided an update that commencement of the Beneficial Ownership Transparency Act, 2023 is expected in July 2024 and that until advised otherwise, industry should continue to file beneficial ownership information using the existing CSV file under the current beneficial ownership regime.

## 2. Anti-Money Laundering (Amendment) Regulations, 2024

On 19 April 2024, the Anti-Money Laundering (Amendment) Regulations, 2024 were brought into force (the “**Amending Regulations**”).

The Amending Regulations:

- expand relevant references in the Anti-Money Laundering Regulations (as revised) (the “**Regulations**”) to include proliferation financing as well as terrorist financing and money laundering;
- in respect of risk assessments, require that the underlying policies, controls and procedures of persons undertaking relevant financial business are consistent with national requirements and guidance from competent authorities and self-regulatory bodies to enable a person to manage and mitigate the money laundering risks, terrorist financing risks and proliferation financing risks that have been identified by the country or by the relevant financial business; and
- expand enhanced due diligence requirements to include sanctions screening in respect of higher proliferation financing risks.

The Amending Regulations also include requirements for designated non-financial businesses and professions that are subject to the Regulations to provide additional information on registration with their relevant supervisory authority (e.g. such entity’s ownership and control structure and names and dates of appointment of their AML Officers). Designated non-financial businesses and professions now also have a duty to notify their relevant supervisory authority of any change in their risk assessment.

In respect of the power of a supervisory authority to impose administrative fines, the Amending Regulations provide that a supervisory authority now has the ability to impose administrative fines on directors, managers, secretaries, partners or other similar officers of designated non-financial businesses or professions which contravene the Regulations.

## 3. Proceeds of Crime (Amendment) Act, 2023 (the “Amendment Act”)

As referred to in our [Q1 2024 Regulatory Update](#), parts of the Amendment Act were brought into force on 31 January 2024 with the remaining sections to be brought into force at the end of April. Amendments to sections 11-13 of the Proceeds of Crime Act (as revised) concerning the concealment of, arrangements in relation to and the acquisition, use and possession of property were scheduled to come into force on 30 April 2024 but will now come into force on 1 January 2025.

Sections 11, 12 and 13 include a statutory defence against money laundering where a suspicious activity report (“**SAR**”) is filed or intended to be filed provided that disclosure is made to the Financial Reporting Authority and, in respect of the Amendment Act, where the consent of the FRA has been provided to proceed with the action giving rise to the SAR. Regulations are proposed to be published to clarify the framework under which a person who files a SAR may have a defence in relation to certain offences under this new consent requirement.

## 4. Insolvency Practitioners (Amendment) Regulations, 2024

On 31 May 2024, the Insolvency Practitioners (Amendments) Regulations 2024 were gazetted and set out new minimum and maximum rates of remuneration for Official Liquidators effective 1 June 2024.

## 5. Cayman Islands Monetary Authority (“CIMA”) Updates:

### A. Electronic Submission of Audit Waivers for Regulated Mutual and Private Funds

On 2 May 2024, CIMA issued a [notice](#) providing an update to the process of submitting Audit Waiver applications for regulated funds through the REEFS portal. Effective 27 May 2024, all new Audit Waiver applications are to be filed via the REEFS portal using the form FWV-161-22.

### B. CIMA Regulatory Policy – Registration or Licensing of Virtual Asset Service Providers

On 15 May 2024 CIMA published a [regulatory policy](#) setting out the requirements for approving the registration or licensing of virtual asset service providers (“VASPs”) in accordance with the Virtual Asset (Service Providers) Act (as revised) (the “**VASP Act**”). In accordance with the VASP Act, entities must register to provide virtual asset services or obtain a license for operating a trading platform or providing custodial services. The licensing regime for VASPs operating a trading platform or providing custodial services is not yet effective.

In respect of an application, applicants should, amongst other things: (i) obtain a legal opinion on their compliance with the VASP Act; (ii) schedule a meeting with CIMA to discuss the prospective application; (iii) provide business plans, ownership structures and compliance plans (in particular ensuring compliance with local AML laws); and (iv) pay the relevant fee.

### C. New Rule and Statement of Guidance – Market Conduct for Trust and Corporate Service Providers and Company Managers

In May 2024, CIMA published a Rule and Statement of Guidance, which apply to holders of different types of trust licenses issued under the Banks and Trust Companies Act (as revised) and holders of a Companies Management License and Corporate Services License issued under the Companies Management Act (as revised). The Rule and Statement of Guidance (effective November 2024) updates the previous Rule and Statement of Guidance published by CIMA in March 2019. The Rule and Statement of Guidance include requirements such as fair treatment of clients and protection of client assets and monies.

## 6. Perpetuities (Amendment) Bill, 2024

The Perpetuities (Amendment) Bill was gazetted on 24 May 2024 and seeks to increase Cayman’s competitiveness in the trusts and estate planning sector by removing the mandatory perpetuity period of 150 years for many existing and future trusts.

## 7. New Reporting Requirements of the Financial Reporting Authority (“FRA”) under the Russia Sanctions Regime

On 15 April 2024, the FRA published a [Public Notice](#) under the Russia Sanctions Regime.

In December 2023, the UK Government introduced additional reporting requirements into Part 8 of the Russia (Sanctions) (EU Exit) Regulations 2019. Those additional reporting requirements, which apply, respectively, to relevant firms and designated persons, were introduced by the Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2023. These measures extended to the Cayman Islands by virtue of Article 2 of the Russia (Sanctions) (Overseas Territories) Order 2020. Appropriate modifications so as to render the new asset reporting measures for designated persons fully operable in the Cayman Islands were made by the Russia (Sanctions) (Overseas Territories) (Amendment) Order 2024, and came into force on 14 March 2024.

## Immobilised assets reporting measure

A relevant firm is required to report to the Governor as soon as practicable if it knows, or has reasonable cause to suspect, that it holds funds or economic resources for a person to whom financial services must not be provided to under regulation 18A(1) (a “**prohibited person**”).

A prohibited person means the Central Bank of the Russia Federation, the National Wealth Fund of the Russian Federation, the Ministry of Finance of the Russian Federation, a person owned or controlled directly or indirectly by these entities, or a person acting on behalf of or at the direction of these entities.

## Designated Persons asset reporting measure

Designated persons who are Territory persons are required under regulation 70A(1) to report the nature, value and location of any funds or economic resources they own, hold or control in any jurisdiction (worldwide assets) in excess of US \$13,000 to the Governor. “**Territory person**” is defined in regulation 2 of the Russia (Sanctions) (EU Exit) Regulations 2019, as modified.

Designated persons who are not Territory persons are required under regulation 70A(2) to report the nature, value and location of any funds or economic resources they own, hold or control in the Cayman Islands (Territory assets) in excess of US \$13,000 to the Governor.

The initial report must be provided within 10 weeks of the relevant date, which is either: (i) the date on which the modifying legislation came into force (14 March 2024); or (ii) in the case of a person who was designated on or after 14 March 2024, the date of that person’s designation.

## 8. CRS Reportable Jurisdictions

On 12 April, 2024, updates to the Common Reporting Standard (“**CRS**”) lists of participating jurisdictions and reportable jurisdictions were gazetted. The update includes the addition of Georgia, Kenya, Moldova and Ukraine to the list of Reportable Jurisdictions for reports due from 2024 onwards. Armenia, Morocco, Rwanda, Senegal, Tunisia and Uganda have been added to the list of Reportable Jurisdictions for reports due in 2025 onwards.

Georgia, Gibraltar, Kazakhstan, Liberia, Moldova, Montenegro, Morocco, Qatar, Uganda and Ukraine have been removed as Participating Jurisdictions.

## British Virgin Islands (BVI)

### 1. Consultation on amendments to the BVI Business Companies Act

On 22 April 2024 the BVI Financial Services Commission (the “**FSC**”) invited the members of the public to provide feedback on proposed reforms to the BVI Business Companies Act through a draft BVI Business Companies (Amendment) Act 2024.

Several of the reforms relate to FATF Recommendation 24 concerning legal persons. These primarily concern tighter restrictions on the use of nominee shareholders and nominee directors, as well as the uniform filing of registers of members with the registrar.

In addition to keeping a register of members, every company will also have to provide the names and addresses of nominee shareholders and their nominators, the date of cessation of a person as a nominator and the date on which a nominee shareholder ceased to be a member. Corresponding duties are created in relation to foreign companies, which must now keep a register of members, a copy of which must be filed with the registrar containing specified information.

The current regime, whereby a company opts to file its register of members for registration by the registrar is being phased out. Instead, every company will have to file a copy of its register of members with the registrar.

Other measures change the rules for collection, keeping and maintaining of certain key information, reduction in the period for appointment of first directors of incorporated companies, obligation of companies to cooperate with competent authorities in the performance of their statutory duties and ensuring that penalties provided are sufficiently dissuasive and proportionate.

A new section requires a company to collect, maintain and keep up-to-date beneficial ownership information, which should be filed with the registrar either at the time of incorporation of the company or within 14 days thereof. A similar requirement applies in relation to a company that is continued in the BVI or a foreign company, except that the permissible 14-day period does not apply.

The penalties regime is being overhauled, repealing the specific offences and penalties provisions in the Act and replacing them with a more streamlined contraventions regime. This regime will impose fixed penalties, administrative penalties and offences triable and punishable criminally. Provision is also made for late penalty payments in certain cases. Representations can be made to the registrar before any administrative penalties can be imposed. Provision has also been made to enable the FSC to require the filing of returns by companies.

Transitional provisions are being provided for existing companies and companies that have been struck off and dissolved. However, all companies that are incorporated, registered or continued after the commencement date will have to comply with the obligations of filing their register of members and beneficial ownership information as provided in the amendments.

The consultation closed on 6 May 2024.

## 2. Changes to Economic Substance Rules

On 2 April 2024, the BVI International Tax Authority published version four of its economic substance rules and explanatory notes, following the introduction of a federal corporate income tax system in the United Arab Emirates (UAE) in respect of financial years beginning on or after 1 June 2023. Broadly, Rule 5 has been amended to allow for claims of tax non-residence in the UAE for economic substance financial periods commencing on or after that date.

## 3. 2024 Regulatory Calendar

Please click [here](#) to access Campbells 2024 BVI Key Annual Dates Calendar (which provides key regulatory filing dates for clients).

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