

Alert

Recent Regulatory Developments Affecting BVI Mutual Funds and Private Investment Funds

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Requirement to appoint a Money Laundering Reporting Officer (“MLRO”)

Under the Anti-Money Laundering Regulations (Revised Edition 2020), as amended by the Anti-Money Laundering (Amendment) Regulations, 2022, and the Anti-Money Laundering and Terrorist Financing Code of Practice (Revised Edition 2020), as amended by the Anti-Money Laundering (Amendment) Code of Practice, 2022, all BVI mutual funds and private investment funds (“PIFs”) are now required to have a Money Laundering Reporting Officer (“MLRO”) at all times.

Pursuant to a recent amendment, which took effect from 29 August 2022, such funds are no longer permitted to rely solely on their fund administrator to carry out the functional duties of an MLRO, but must actually appoint a person specifically designated as the MLRO (who may be a suitably qualified individual representative of the fund, or of its administrator). All mutual funds and PIFs are reminded to immediately appoint an MLRO if they have not done so already, and to promptly notify such appointment to the BVI Financial Services Commission and the BVI Financial Investigation Agency (the “FIA”) using the prescribed forms.

Among other duties, the MLRO is responsible for ensuring compliance by staff of the fund with the provisions of the Code and other enactments relating to money laundering and terrorist financing, acts as the primary liaison between the fund and the FIA, and has a duty to report to the FIA any suspicious transactions relating to the fund.

ITA’s reminder as to who can be a “Primary User” within the BVIFARS portal

BVI funds are reminded that, from 1 January 2023, fund administrators and other service providers who provide tax reporting compliance services to a fund, but do not hold a permanent position within the fund, will no longer be able to exercise “Primary User” rights within the BVIFARS portal. Such external service providers could, however, still be appointed as a “Secondary User” with access permissions.

In the BVI, compliance with the reporting requirements of the Mutual Legal Assistance (Tax Matters) Act, Revised Edition 2020 (the “Act”) pertaining to US FATCA and the OECD Common Reporting Standard (the “CRS”) is satisfied by reporting via the BVI Financial Account Reporting System (“BVIFARS”) portal.

On 8 September 2022, the BVI International Tax Authority (the “ITA”) issued a notice to all Virgin Islands Financial Institutions (“VIFIs”), which include both mutual funds and PIFs, to remind them that section 28(2)(c) of the Act requires a VIFI to provide the name, address, designation and contact details of the individual authorised by the VIFI to be its principal point of contact for all purposes of compliance with the Act and the CRS. Such person is identified as the “Primary User” within the BVIFARS portal and should not change, but must have a permanent position within the VIFI.

Section 31 of the Act allows a VIFI to appoint an agent (such as a fund administrator) to carry out their duties and obligations imposed on the VIFI by the Act. However, since these duties and obligations remain the responsibility of the VIFI, the agent cannot be the Primary User within the BVIFARS portal and can only be given “Secondary User” access on behalf of the VIFI. The identity of the Secondary User does not have to be communicated to the ITA, as Secondary User privileges can be given to that user by the Primary User directly within the portal.

Any registered VIFI that has an appointed Primary User who does not have a permanent position within the VIFI is required to update the Primary User details within the BVIFARS portal by no later than 31 December 2022. Failure to update such information by the stated deadline would be an offence under the CRS legislation.

To learn more, or to find out if any entities in your group may be affected by the above developments, please reach out to your usual Conyers contact or any of the attorneys named below.

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