

Bermuda report – Q1 2022

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This report provides a summary of important legislative and regulatory developments in Bermuda for the quarter ended 31 March 2022. For this quarter, our report focuses on developments that are relevant to the following sectors: Anti-Money Laundering (“AML”)/ Anti-Terrorist Financing (“ATF”) and Sanctions; Banking; Company Law; Digital Assets; Economic Substance and Taxation; Employment and Immigration; Insurance; Investments; Privacy; and Telecoms/ Utilities.

[AML/ATF and Sanctions](#)

The Proceeds of Crime Amendment Act 2022 became operative on 27 February 2022. This Act amends the Proceeds of Crime Act 1997 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008. Of particular note, credit unions are now AML/ATF regulated financial institutions and the scope of AML/ATF regulation in relation to insurance marketplace providers has been limited to insurance marketplace providers acting in connection with direct long-term insurance business. In addition, certain changes were made in relation to transactions (specifically, wire transfers and transfers of funds) involving digital assets, and digital asset business.

UK, US and European officials introduced an extensive package of financial sanctions on Russia. The Bermuda Government released a statement on 4 March 2022 with respect to the impact of the sanctions regime on the Bermuda

Civil Aviation Authority (“BCAA”), which is the regulatory body responsible for the regulation and oversight of aviation in Bermuda and all aircraft on the Bermuda Aircraft Registry. A further statement was released on 14 March 2022 which addressed the impact of the sanctions regime on the Bermuda Shipping and Maritime Authority.

[Banking](#)

To ensure that its regulatory framework for banking is aligned with international standards, while ensuring that such framework remains appropriate for the Bermuda banking sector, the Bermuda Monetary Authority (“BMA”) is seeking to adopt reforms which were introduced by the Basel Committee on Banking Supervision (“Basel”). To achieve this goal, the BMA has published the following consultation papers:

- [Proposed Revisions To The Large Exposure Framework For Banks](#). As set out in this consultation paper, the BMA proposes to adopt the revised Basel supervisory framework for measuring and controlling large exposure whilst also retaining various elements of its 2007 guidance. The BMA proposes to adopt this framework by 30 June 2022.
- [Operational Risks For Banks](#). As set out in this consultation paper, the BMA proposes to adopt a revised methodology in which a bank is required to calculate its minimum capital requirements for operational risk exposures. The reforms are expected to be implemented by 1 January 2023.

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- Proposed Adoption Of The Revised Operational Risk Principles For Banks. The BMA requires licenced institutions to maintain risk management policies and procedures that are appropriate for their individual business profile and that it adopts and applies suitable arrangements for identifying, assessing, monitoring and controlling/mitigating their operational risks. Current guidance entitled “Banks and Deposit Companies Act 1999: The Management of Operational Risk” (“**2007 Guidance**”) was issued in 2007 and sets out the BMA’s policy on managing operational risk by banks and deposit companies. The 2007 Guidance was largely based on Basel’s Principles for the Sound Management of Operational Risk issued in 2003. In March 2021, Basel issued “Revisions to the Principles for the Sound Management of Operational Risk” (“**Revised Principles**”). As set out in this consultation paper, the BMA proposes to adopt the Revised Principles to replace the 2007 Guidance. The reforms are expected to be effective 1 January 2023.
- Output Floor For Banks. As part of the finalisation of the Basel III reforms published in December 2017, Basel introduced the output floor, which is designed for banks that utilise internal models to calculate their risk weighted assets. The BMA does not currently approve the use of internal models for this purpose and requires that all banks utilise the standardised approaches for credit, market and operational risks. However, as set out in this consultation paper, the BMA proposes to adopt this standard to allow for the possibility of this changing in the future. The output floor will be implemented as of 1 January 2023.

In addition, as part of the process of ongoing review of liquidity and capital standards for local banks, the BMA proposes to amend the treatment of deposit outflows in the calculation of the liquidity coverage ratio originating from the following depositor types: trust customers; captive and inward insurance customers; and fund management customers. As set out in the consultation paper ‘Amendments To Liquidity Coverage Ratio Outflow Rates For Specific Financial Counterparties’ will become effective 1 April 2022 and, subject to BMA approval, banks will be allowed to apply a national discretion to outflow rates for deposits from such types of depositor.

Company Law

The Thailand Stock Exchange became an appointed stock exchange on 7 March 2022.

Digital Assets

The BMA published a consultation paper with respect to proposed amendments to the Digital Asset Business Act 2018 along with enhancements to certain digital asset business rules to provide further clarity and to facilitate more effective administration of the Act. The period for consultation ended in January 2022.

Economic Substance and Taxation

The Ministry of Finance reported on 24 February 2022 that Bermuda’s commitment to exchange information with international tax authorities, as recommended by the OECD Forum on Harmful Tax Practices (“FHTP”) in November 2021, has been noted temporarily in the State of Play document (Annex II of the conclusions of the EU Council of Ministers). Annex II states that Bermuda has committed to address the FHTP recommendations with regards to the effective implementation of substance requirements, in time to allow the FHTP to conclude at its next meeting in 2022 that the recommendations have been addressed.

In relation to Bermuda’s commitment to the EU, the FHTP will formally review the island’s progress in addressing the recommendation at its upcoming meeting in April 2022, with a view to removing the recommendation. It is anticipated that Bermuda will be removed from Annex II in the next relevant meeting of the EU Council, currently scheduled for October 2022, and subsequent to formal recognition of the island’s updated position at the FHTP Forum meeting in April this year.

Employment and Immigration

The Ministry of Labour provided an update on restricted and closed job categories. Effective from 1 February 2022, for a 6-month period ending 31 July 2022, debt collectors, telephone switchboard operators, pool/beach attendants, deckhands, and dispatchers (road transport) have been added to the Closed list, and recruiters and nail technicians have been moved from the Closed list into the Open category.

The following legislative developments were effected during the quarter:

1. The Human Rights Amendment Act 2021 came into operation on 7 February 2022. This Act amends the Human Rights Act 1981 to make provision for the Human Rights Tribunal and other associated matters.
2. The National Pension Scheme (Refund) (Temporary) Regulations 2022 came into operation on 8 March 2022. The Regulations extend the period for which an individual can apply for a \$6,000 withdrawal from their pension fund to 30 June 2022.
3. The National Pension Scheme (Occupational Pensions) Amendment and Validation Act 2022 received Royal Assent on 29 March 2022 and is operative as of 29 March 2022. This Act amends the National Pension Scheme (Occupational Pensions) Act 1998 to provide a further one-time lump sum withdrawal of up to \$6,000 and also deems the National Pension Scheme (Refund) (Temporary) Regulations 2022 to have had effect since 5 July 2021.
4. The Payroll Tax Amendment and Validation Act 2022 received Royal Assent on 31 March 2022 and will be in force on 1 April 2022. This Act amends the Payroll Tax Act 1995 and

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the Payroll Tax Rates Act 1995 to validate certain waivers of payroll tax granted by or on behalf of the Minister of Finance.

5. The Minister of Finance issued the National Pension Scheme (Refund) (Temporary) (No.2) Regulations 2022 on 30 March 2022 which will come into operation on 1 July 2022. These regulations allow for individuals to apply for an additional withdrawal from their pension fund of \$6,000 up until 30 June 2023.

Insurance

The BMA published the following insurance-related information during this quarter:

1. 2021 Capital and Solvency Return Stress/Scenario Instructions for Class 3A Insurers, Class 3B Insurers, Class 4 Insurers and Insurance Groups. The objective of stress testing within the 2021 year-end capital and solvency returns is to assess the capital adequacy of insurers under adverse financial market and underwriting conditions and to provide a comprehensive understanding of the sector's general vulnerability to shocks. These tests help determine the financial capacity of insurers to absorb the manifestation of key financial risks.
2. 2021 Year-End Filing requirements for Class IIGB (re)insurers. This paper summarizes the filing requirements for the 2021 financial year-end applicable to the Innovative Insurer General Business ("IIGB") class of insurers.
3. 2021 Instruction Book with respect to the IIGB Return. This handbook presents instructions for computing an IIGB's capital and surplus and for submitting the capital and solvency return, including the BSCR model, to the BMA.
4. Letter to stakeholders. This letter was issued in response to comments received on the Consultation Paper: Insurance (Prudential Standards) (Insurance Group Solvency Requirements) Amendment Rules 2022, Insurance (Prudential Standards) (Class 4 and 3B Solvency Requirements) Amendment Rules 2022, Insurance (Prudential Standards) (Class 3A Solvency Requirements) Amendment Rules 2022, Insurance (Prudential Standards) (Class C, Class D and Class E Solvency Requirements) Amendment Rules 2022.
5. A Bill entitled "Insurance Amendment No. 1 Act 2022". This Bill seeks to amend the Insurance Act 1978 to, among other things, provide for: (a) supervisory requirements relating to the winding of up composite insurers regulated by the BMA; (b) extension of the BMA's statutory powers, duties and functions with respect to the supervision of insurance marketplace providers; and (c) additional notification requirements applicable to insurance marketplace providers and insurance intermediaries. The amendments proposed by this Bill are not yet in effect.

Investment Business

Over the course of the last year, the BMA has proposed a series of enhancements to its regulatory and supervisory programme for investment businesses in Bermuda, as part of a key strategic initiative to support modernisation of that sector and ongoing compliance with international standards and best practice. In furtherance of this objective, the BMA has published the following:

1. A consultation paper entitled "Proposed Enhancements to the Investment Business Regime: General Business Conduct and Practice: Code of Conduct and Advertising Code of Conduct". As set out in the consultation paper, the BMA proposes to consolidate the General Business Conduct and Practice: Code of Conduct and the Advertising Code of Conduct into a single code. The new consolidated instrument will be referred to as the "Investment Business General Business Code of Conduct and Practice".
2. The Investment Business Amendment Act 2021. This Act was passed by the Senate on 28 March 2022 and has received Royal Assent; accordingly, the amendments will become effective when the Minister of Finance publishes a notice in the Official Gazette. These amendments broaden the scope of the Bermuda investment business regime such that, among other things, certain persons who were previously exempt or outside of its remit may now require licensing or registration with the BMA.
3. The Operational Cyber Risk Management Code of Conduct for Corporate Service Providers, Trust Companies, Money Service Business, Investment Business and Fund Administration Providers. In accordance with the threshold requirement that "Relevant Licensed Entities" must conduct their business in a prudent manner, all corporate service providers, trust companies, money service businesses, investment businesses and fund administration providers (each a Relevant Licensed Entity) are required to implement adequate systems, appropriate to the nature, scale and complexity of their business risk profile.

Privacy

In December 2021, the Attorney General's Chambers made an application for judicial review against the decision of the Information Commissioner to issue summonses for the production of records obtained or created by the Attorney-General's Chambers. The court was asked to review (1) whether the Information Commissioner has a right to review a public authority's refusal to disclose a record on the grounds that the Public Access to Information Act 2010 ("PATI") does not apply, and (2) whether the Information Commissioner has a right to examine a record to which PATI does not apply.

The recent ruling in the Supreme Court in the case of Attorney General v Information Commissioner demonstrates that section 4 of PATI was written to recognize that the Act should

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not apply to operational records of certain public authorities such as the Attorney-General's Chambers, Department of Public Prosecutions, Human Rights Commission, Office of the Ombudsman, etc., and even the judiciary.

Telecoms and Utilities

The Bermuda Government issued a public notification on 14 January 2022 stating that the Minister of Energy has consented to extend the period within which the Regulatory Authority ("RA") must commence the regulatory review of the electronic communications sector under section 17 of the Regulatory Authority Act 2011. The review must commence on 1 August 2022.

The Bermuda Government issued a public notification on 24 February 2022 seeking applications for the position of Commissioner within the Board of Commissioners, to whom the Chief Executive Officer of the RA will report. The Board of Commissioners is currently responsible for regulating the energy sector and electronic communications sector (other than broadcasting). The broadcasting industry is expected to be regulated by the RA in due course.

The RA invited comments on the following proposed changes of control:

1. Saturn Solar Bermuda 1 Ltd on 6 January 2022. ("Saturn Solar 1") to FB Solar LLC. Saturn Solar 1 currently holds a licence to engage in the Bulk Generation of Renewable Energy at the L.F. Wade Airport Finger.
2. World on Wireless Limited ("WOW") to TeleBermuda International Limited ("TBI"). WOW and TBI each hold an Integrated Communications Operating Licence.

The Minister of Home Affairs issued the Electricity (Regulatory Authority Fees) Amendment Regulations 2022 and the Electronic Communications (Regulatory Authority Fees) Regulations 2022. Effective 1 April 2022, these Regulations amend certain fees payable in the electricity and electronic communications sectors.

If you would like further information about any of the topics mentioned in this report, please reach out to your usual contact at Carey Olsen.



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