

Bermuda report – Q2 2022

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This report provides a summary of important legislative and regulatory developments in Bermuda for the quarter ended 30 June 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; Digital Assets; Employment and Immigration; Insurance; Investment Business; Investment Funds; Privacy; Telecoms/Utilities; and General Legal/ Regulatory Reforms.

AML/ATF and Sanctions

The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 require the Bermuda regulated sector and relevant persons to put in place policies and procedures in order to prevent activities related to money laundering and terrorist financing and to apply enhanced customer due diligence to high-risk jurisdictions. On 11 April 2022, the Ministry of Legal Affairs and Constitutional Reform issued the AML-ATF Advisory 1/2022 regarding the risks relating to deficiencies in AML/ATF systems and controls in the following high-risk countries:

1. Democratic People’s republic of Korea*
2. Iran*

The advisory also specified that appropriate actions should be taken to minimize the associated risks, which may include enhanced due diligence measures in high-risk situations, with respect to the following countries:

- | | |
|-------------------|--------------------------|
| 1. Albania | 13. Nicaragua* |
| 2. Barbados | 14. Pakistan |
| 3. Burkina Faso | 15. Panama |
| 4. Cambodia | 16. Philippines |
| 5. Cayman Islands | 17. Senegal |
| 6. Haiti | 18. South Sudan* |
| 7. Jamaica | 19. Syria* |
| 8. Jordan | 20. Turkey |
| 9. Malta | 21. Uganda |
| 10. Mali | 22. United Arab Emirates |
| 11. Morocco | 23. Yemen* |
| 12. Myanmar* | |

Each country marked with an (*) is subject to sanctions measures at the time of publication of the advisory which require firms to take additional measures, in accordance with the International Sanctions Regulations 2013.

Banking

Stakeholder Letter – Amendments to the Banks and Deposit Companies Act 1999

On 18 May 2022, the Bermuda Monetary Authority (“BMA”) published a stakeholder letter with respect to feedback received on its consultation paper dated 21 August 2020 that proposed amendments to the Second and Third Schedule of the Banks and Deposit Companies Act 1999 (“BDCA”) which

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sought to expand the permitted customer base of a restricted bank and, to facilitate the growth of restricted banks in Bermuda, the BMA requested views on amending the minimum net asset amount at the time of licensing for banks and whether these entities should be subjected to Basel III requirements.

According to the stakeholder letter:

- the Second Schedule will be amended to allow a “restricted bank” (i.e., institutions with a restricted banking licence authorising the institution to provide banking services, as specified in the BDCA, to persons specified in the Third Schedule) to have minimum net assets of not less than \$5 million at the time when the licence is granted.
- the Third Schedule will be amended to (a) allow “restricted banks” to offer banking services to overseas customers; and (b) permit services to be offered to Bermuda residents and businesses who are unable to access basic banking services from the traditional banks.
- there was support for the proposal that restricted banks comply with Basel III requirements when such requirements come into effect.

The BMA will proceed with recommending the amendments to the Second and Third Schedules and will, in due course, provide guidance on these matters.

Consultation Paper – Credit Risk Capital Charges

The BMA has issued a consultation paper with respect to amendments to the standardised approach to measuring credit risk capital charges for banks. The BMA is seeking to adopt the Basel III reforms as introduced within the Basel Committee on Banking Supervision’s (“Basel”) December 2017 paper entitled “Basel III: Finalising post-crisis reforms” (the “Basel Framework”). The Basel Framework includes a revised standardised approach (“RSA”), which banks are required to use to calculate their minimum capital requirements for credit risk exposures. The BMA proposes to largely adopt the RSA as prescribed by Basel while applying national discretions for real estate exposures which better represent Bermuda’s real estate market.

Basel’s proposed adoption of the RSA for credit risk was originally due to become effective on 1 January 2022; however, due to the impact of the COVID-19 global pandemic, Basel changed the timeline for implementation to 1 January 2023.

Given the extent of changes to the RSA, the BMA will work with industry stakeholders to establish an appropriate implementation date.

Once a final standard has been decided the new requirements will be included in the BMA’s Basel III for Bermuda Banks – Final Rule document.

Digital Assets

With a view to supporting the digital asset industry, on 5 April 2022 the BMA published the following draft documents for consultation:

Digital Asset Business (Cyber Risk) Rules 2022 (the “Cyber Rules”). The Cyber Rules introduce the requirement for holders of a Class F licence under the Digital Asset Business Act 2018 to file a written cyber risk return with the BMA on an annual basis. Class M and Class T licence holders will be required to file such return on the date specified in their licence. The Cyber Rules also stipulate that each cyber return must be accompanied by a declaration signed by the chief information security officer, as defined in the Cyber Rules, and a senior executive or director of the licenced undertaking, declaring that to the best of their knowledge and belief, the cyber return is accurate in all material respects.

Digital Asset Business Act Code of Practice (the “Digital Code”). The Digital Code provides guidance on the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on Digital Asset Business (“DAB”). The Digital Code should be read in conjunction with the Digital Asset Business Statement of Principles.

Digital Asset Business Custody Code of Practice (the “Custody Code”). The purpose of the Custody Code is to provide clarity as to what standards the BMA expects when considering whether a custodian is employing an acceptable level of care when safeguarding its clients’ digital assets. The Custody Code should be read in conjunction with the Digital Asset Business Operational Cyber Risk Management Code of Practice.

Digital Asset Business Operational Cyber Risk Management Code of Practice (the “Cyber Risk Management Code”). The Cyber Risk Management Code applies to all DABs and establishes duties, requirements, standards, and procedures to be complied with in relation to operational cyber risk. In particular, the Cyber Risk Management Code is designed to promote the stable and secure management of information technology systems of regulated entities. DABs must implement their own technology risk programmes, determine what their top risks are and decide the appropriate risk response and provide evidence that there is adequate board visibility and governance of cyber risk.

The Cyber Risk Management Code should be read in conjunction with: section 7 of the Digital Asset Business Act 2018; the Cyber Rules; the Digital Code; and the Custody Code.

Employment and Immigration

Payroll Tax Amendment

The Payroll Tax Amendment and Validation Act 2022 became operative on 1 April 2022. This Act amends the Payroll Tax Act

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

Equality Act

A Bill entitled "Equality Act 2022" was tabled before the House of Assembly on 6 May 2022. This Bill seeks to promote equality in the following ways:

1. requiring all statutory provisions concerning race, sex, or other protected grounds to be interpreted wherever possible to achieve the promotion of equality.
2. expanding the remedies and penalties for discrimination.
3. creating an Equality Council at the Human Rights Commission to promote equality, opportunity and equal pay in the workforce, including the promotion of equal opportunities regarding training and advancement in the workforce and equality in attaining managerial and influential positions.
4. requiring all appointments to Government Boards, Committees, Councils, and Quangos to be made, so far as reasonably practicable, to promote equal representation of race and sex.

The Bill has not yet been passed by the House of Assembly.

Insurance

Group Supervision Rules

On 4 April 2022, the BMA introduced amendments to the Insurance (Group Supervision) Rules 2011 ("**Group Supervision Rules**") which will come into operation on 1 January 2023. These amendments will expand the scope of the Group Supervision Rules with respect to information and cyber security by: clarifying certain corporate governance requirements; adding to the risk management framework; and adding a new cyber reporting obligation.

Solvency Rules

On 5 April 2022, the BMA introduced amendments to the solvency rules applicable to insurance groups and commercial insurers (i.e., Class C, Class D, Class E, Class 3A, Class 3B and Class 4 insurers). These amendments are deemed to be operative as of 1 January 2022 and cover the following:

1. Insurance (Prudential Standards) (Insurance Group Solvency Requirement) Amendment Rules 2022. This amendment revokes Schedule VI entitled "Schedule of fixed income securities" and replaces it with a new Schedule VI entitled "Schedule of assets."
2. Insurance (Prudential Standards) (Class C, Class D and Class E Solvency Requirement) Amendment Rules 2022. This amendment revokes Schedule VI and Part VI Schedule XIII each entitled "Schedule of fixed income securities" and replaced them with a new Schedule VI and Part VI Schedule XIII entitled "Schedule of assets."

3. Insurance (Prudential Standards) (Class 3A Solvency Requirement) Amendment Rules 2022. This amendment revokes Schedule VI entitled "Schedule of fixed income securities" and replaces it with a new Schedule VI entitled "Schedule of assets."
4. Insurance (Prudential Standards) (Class 4 and Class 3B Solvency Requirement) Amendment Rules 2022. This amendment revokes Schedule VI entitled "Schedule of fixed income securities" and replaces it with a new Schedule VI entitled "Schedule of assets."

International Sanctions

On 18 April 2022, the BMA published a notice requesting that all Bermuda insurance groups and commercial insurers (i.e., Class 3A, 3B, 4, C, D and E insurers) participate in a data call with respect to compliance with international sanctions. Registrants were to disclose their exposure to the ongoing events between the Russian Federation and Ukraine and provide details on the impact these events have had on their assets and underwriting as of 31 March 2022. In particular, registrants were to provide details of all known risk exposures domiciled in the Russian Federation, Ukraine and Belarus estimated on a GAAP or IFRS basis.

On 19 April 2022, the BMA published a similar notice with respect to compliance with international sanctions and subsequent events disclosure for limited purpose insurers, intermediaries, collateralized insurers and Class IIGB insurers. The BMA reminded such registrants to report details related to exposure to international sanctions on the "Schedule of Compliance with Suspicious Activity Reports and Sanctions" enclosed with their annual filing. For limited purpose insurers, the BMA also drew attention to the schedule amendment requesting confirmation of adherence specifically in relation to the events involving the Russian Federation and Ukraine.

As the events involving the Russian Federation and Ukraine continue to evolve, the BMA highlighted the requirement to disclose in the notes to the GAAP and/or Statutory Financial Statements (as applicable) any transaction made or other events occurring between the end of the relevant year and the date of approval of the financial statements by the board of directors materially affecting the financial statements, not being a transaction made or an event occurring in the ordinary course of business. The BMA also expects registrants to include any material impact on the financial statements resulting from the events involving the Russian Federation and Ukraine in the subsequent events note to the financial statements.

Limited purposes insurers who have filed their 2021 E-SFR filings and Class IIGB insurers and collateralized insurers who have filed their 2021 annual regulatory filings with the BMA prior to 30 April 2022 and who have not included the above-mentioned subsequent events note disclosure in their filings

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are required to prepare and file a summary of their assessment of the impact of the events involving the Russian Federation and Ukraine.

Insurance intermediaries were asked to notify the BMA of any subsequent event that is not an event occurring in the ordinary course of business that arises as a result of the events involving the Russian Federation and Ukraine.

Insurance Intermediaries – Annual Return

The BMA published a notice with respect to 2022 annual return templates for insurance intermediaries. The BMA also posted to its website annual return templates for insurance managers, insurance brokers and agents.

The BMA confirmed that these templates have not undergone any substantive changes from the prior year, other than the following:

1. Cyber Risk Schedule – communicated in December 2021; and
2. Anti-Money Laundering/Anti-Terrorist Financing Questionnaire, expansion of zones – communicated in February 2022.

The annual return templates were to be submitted to the BMA on or before the filing deadline of 30 June 2022.

Insurance Act 1978 – Amendments

On 5 May 2022, the BMA published a consultation paper proposing the following amendments to the Insurance Act 1978 to enhance the innovation regulatory regime:

1. introduction of a new innovative class for long-term insurers (“Class IILT”);
2. housekeeping amendments affecting innovative insurers and innovative intermediaries; and
3. enhancing Section 24 of the Insurance Act 1978 in regards to dual licensed insurers.

Climate Risk Report

On 10 May 2022, the BMA published its 2021 Climate Risk Exposure Survey Report. This report summarises the results of a climate risk exposure survey conducted by the BMA, focusing on the Bermuda insurance industry and outlines statistics, findings and challenges. The survey demonstrated that climate change continues to be a high priority for the industry. For P&C insurers, physical risk is the most significant driver of climate risk-related exposures due to the nature of risks underwritten in Bermuda, particularly Nat Cat exposures. From the asset perspective (transition risk), while not negligible, there is limited exposure to what is currently considered carbon-intensive assets. Transition risk is carefully considered in the strategic decisions of an increasing number of companies, with many expressing that ESG criteria have found their way into the

asset management processes. With regards to green and carbon-intensive underwriting, there is limited exposure to high-carbon intensive sectors and still a small but steadily increasing green underwriting activity.

Consultation Paper – Internationally Active Insurance Group Head Office

On 23 May 2022, the BMA published a consultation paper with respect to designating the head office of an internationally active insurance group (“IAIG”) under the Insurance Act 1978. Although not currently the group supervisor of any IAIG, the BMA intends to integrate requirements for IAIGs into Bermuda’s supervisory framework to allow the BMA to take on such a role in the future.

As such, the BMA proposes to amend the Insurance Act 1978 to outline the process which may be used in determining which entity within an IAIG will be designated as the head of the IAIG for group supervision purposes. It is proposed that the entity chosen will allow the BMA to exercise its supervisory powers over the IAIG most effectively. This may result in a group holding company rather than an insurance legal entity being designated as the head of the IAIG.

Consultation Paper – Recovery Planning

On 6 June 2022, the BMA published a consultation paper on the proposed introduction of a recovery planning regime for the insurance sector. The proposed regime, which the BMA plans to introduce in the form of rules, is intended to:

1. aid insurers in understanding their own risks from severe stress scenarios; and
2. help strengthen Bermuda’s insurance regulatory framework by ensuring that insurers have a plan to act in an orderly and timely manner when dealing with situations of severe stress.

The BMA will be drafting the actual recovery planning rules in the near future, taking into consideration any feedback received from this consultation. The rules will also be subject to public consultation.

Stakeholder Letter – Insurance Debt

On 9 June 2022, the BMA published a stakeholder letter with respect to feedback received on their consultation paper regarding the Insurance Amendment Act 2022. The BMA confirmed its plan to clarify the definition of “insurance debt” as used in the definition of “Winding up of insurers carrying on long-term and general business” to mean a debt to which an insurer is or may become liable pursuant to a reinsurance contract, where that insurer is the person insured.

Investment Business

The Investment Business Amendment Act 2022 (“Amendment Act”) received Royal Assent on 1 April 2022 and will come into

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operation on 27 July 2022. This Amendment Act broadens 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. Please see our Bermuda Report for the period Q1 2022 for further detail of the Amendment Act.

Investment Funds

On 28 April 2022, the BMA published a notice with respect to the Q1 2022 statistical filing extension for investment funds. Effective 15 March 2022, the BMA rolled out the INTEGRA solution to the investment funds sector. To assist in meeting the NAV filings for the period ending on 31 March 2022, the BMA extended a one-month grace period to complete the filings.

Privacy

On 9 May 2022, the Office of the Privacy Commissioner (“PrivCom”) announced that Privacy Commissioner Alexander White was invited to speak to members of the newly-formed Global Cross Border Privacy Rules (“CBPR”) Forum about the benefits and potential for Bermuda and other countries to participate in the data transfer system. Bermuda is considered to be a candidate to join the trade and enforcement cooperation agreement and to help set the worldwide rules of the modern digital economy.

The CBPR system was originally developed as a regional agreement for the Asia Pacific region. According to PrivCom’s previous guidance, certification mechanisms like the CPBR can provide a dependable and predictable system for protecting rights while allowing the proper use of data transfers.

Current Global CBPR Forum members include Canada, Japan, the Republic of Korea, the Philippines, Singapore, Taiwan, and the United States of America. If Bermuda was to join the Global CBPR Forum, individual Bermudians would gain the ability to hold overseas organisations accountable for their privacy rights. The CBPR Forum would also provide Bermudian organisations with a standardised, predictable mechanism to access markets and overseas third parties in participating economies.

Telecoms and Utilities

The following regulations came into operation on 1 April 2022:

1. Electricity (Regulatory Authority Fees) Amendment Regulations 2022 (which amends fees for licence transfers or assignments); and
2. Electronic Communications (Regulatory Fees) Regulations 2022 (which prescribes various fees payable with respect to the electronic communications sector).

Change of Control – Saturn Solar

On 2 June 2022, the Regulatory Authority of Bermuda (“RA”)

issued a press release stating that, in accordance with the Electricity Act 2016 and upon the consent of the Minister of Home Affairs, the RA had approved the change of control of Saturn Solar Bermuda 1 Ltd. (“Saturn Solar”) to FB Solar, LLC. The transaction, namely the transfer of shares from Saturn Power International for Saturn Solar Bermuda Holding Ltd. (“Saturn Holding”), and its wholly-owned subsidiary, Saturn Solar to FB Solar LLC, will result in FB Solar LLC becoming the sole shareholder of Saturn Holding and therefore the indirect parent of Saturn Solar.

Regulatory Sandbox

The Electricity Amendment Act 2022 was passed on 22 June 2022 and received Royal Assent on 30 June 2022. This legislation creates a regulatory ‘sandbox’ for energy innovators. Currently, the Electricity Act 2016 only allows consideration of licences to a person who can demonstrate how it uses technology that is in commercial operation in another jurisdiction. In other words, the Act explicitly excludes innovators and so diminishes Bermuda’s ability to meet its renewable energy goals through the innovative application of promising technologies.

The proposed amendments are intended to make the RA the central and primary point of contact, with the ability to impose conditions on a licence, such as end-of-life provisions that will require the innovative developer to remove and dispose of their equipment if their explorations prove the technology inappropriate for use in Bermuda.

The Minister responsible for energy will publish a notice in the Royal Gazette as to when the Bill will come into operation.

General Legal / Regulatory Reforms

Government Fees

The Government Fees Amendment Regulations 2022 came into operation on 1 April 2022. These Regulations amend the fees payable to the Bermuda Government with respect to the following:

1. Bermuda Immigration and Protection Act 1952;
2. Building Act 1988;
3. Building Authority Act 1962;
4. Customs Department Act 1952;
5. Development and Planning Act 1974; and
6. Royal Prerogative.

Aircraft and Aircraft Engines Mortgage Fees

On 1 April 2022, the Mortgaging of Aircraft and Aircraft Engines (Fees) Amendment Regulations 2022 came into force. These regulations amend various fees payable with respect to the registration of mortgages over aircraft and their engines.

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On 1 May 2022, the Air Navigation (Fees for Certificates and Services) Regulations 2022 came into operation. These regulations amend the fees payable in relation to certificates for personnel licencing, airworthiness, flight operations and other miscellaneous matters as well as additional costs associated with the investigation of various matters in connection with the issuing of the aforementioned certificates.

Standard & Poor's Credit Rating

On 10 May 2022, the Premier and Minister of Finance announced that ratings agency Standard & Poor's ("S&P") reaffirmed Bermuda's "A+" Sovereign Credit Rating as well as Bermuda's "A-1" short-term rating and its "AA+" transfer and convertibility assessment. S&P also maintained the "stable" outlook for Bermuda's credit rating.

On 22 June 2022, the Premier and Minister of Finance announced that Moody's Investor Service ("Moody's") affirmed Bermuda's "A2" issuer and senior unsecured bond ratings, and maintained Bermuda's "stable" outlook.

Bermuda Monetary Authority Amendment Act 2022

On 20 May 2022, a Bill entitled "Bermuda Monetary Authority Amendment Act 2022" was tabled in the House of Assembly. The Bill seeks to amend the Bermuda Monetary Authority Act 1969 to provide for an additional principal object of the BMA relating to oversight of the conduct of business by financial institutions for the purpose of promoting the protection of customers using products and services provided by financial institutions.

Cannabis Licensing Bill 2022

On 12 May 2022, the Governor released a statement with respect to the Bermuda Cannabis Licensing Bill 2022 in which she confirmed that the Bill is inconsistent with what she understands to be the obligations of the UK and Bermuda as set out in United Nations Conventions (the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances). As a result, assenting to the Bill would lead to a breach of those obligations and the Governor must reserve Assent of the Bill under Section 35(2) of Constitution and notify the Secretary of State for Foreign, Commonwealth and Development Affairs.

On 13 May 2022, the Bermuda Government acknowledged receipt of the correspondence from the Governor and confirmed that they await the position of the Secretary of State for Foreign, Commonwealth and Development Affairs regarding this matter.

Cyber Security Legislation

On 3 June 2022, the Bermuda Government announced that work is underway on a Cyber Security Act which is to be tabled this calendar year. The legislation will seek to establish minimum standards for cybersecurity for critical assets such as energy supply, telecommunications, water infrastructure and government data.



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