



A YEAR IN REVIEW EDITION

Newsletter Volume No. 6 | 2024

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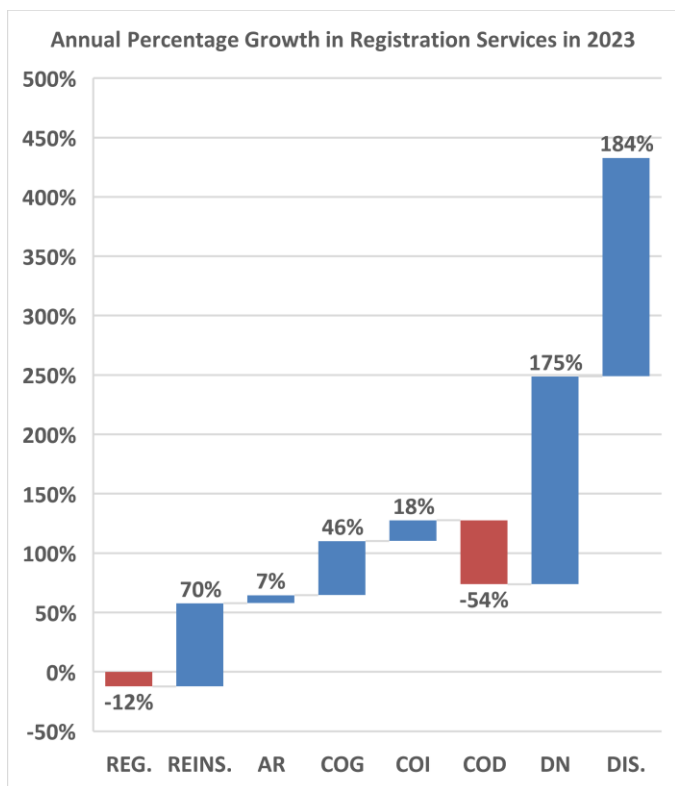
INTRODUCTORY NOTE: The IBCs and CMTSPs department is pleased to unveil this special 'Year in Review Edition' of its periodic newsletter. The renowned author, Maya Angelou once said, "You can't really know where you are going until you know where you have been". In this issue, we pause to reflect on some highlights of the year 2023 with a view of keeping you informed on current developments, to generate improved collaborations as we venture into the unfolding year, 2024. Often, developments in the regional and international arena become the catalysts for sector specific changes to legislation and ultimately, our administrative processes. The core objective of this newsletter is to provide the corporate management and trust service provider's sector with relevant insights gleaned through combined engagements with regional and international stakeholders during the year 2023.

REPORTING UPDATES - All are reminded to start preparations now to ensure that the following reports are submitted by the March 31st deadline.

- Audited Financial Statements.
- Completed Attestations of beneficial ownership and control for all companies and international trusts under management during the calendar year 2023.

COMPANY REGISTRATION STATISTICS -

The registration of new companies declined by 12% in 2023 compared to the previous year. However, annual renewals in 2023 remained relatively consistent to the 2022 outturn. There were increases in certain post registration services, as seen in the chart below. Of importance, 2023 saw a 175% increase in the issuance of defective notices which resulted from inaccurately filed information. Corporate management and trust service providers are therefore reminded to carefully review documents for accuracy and completeness before they are submitted to the Commission.



REG.	Registrations	COG	Certificates Of Good Standing	DN	Defective Notices
REINS.	Reinstatements	COI	Certificates Of Incumbency	DIS	Dissolutions
AR	Annual Renewals	COD	Change Of Directors		

INTERNATIONAL LIMITED LIABILITY COMPANIES REGISTRATION -

In 2023 the Commission expanded the range of registration services to include companies registered pursuant to the International Limited Liability Companies Act, 2007. Corporate management and trust service providers who are desirous of forming or registering an ILLC are invited to contact the Commission for further information.

TRAINING & DEVELOPMENT -

The department remains committed to ongoing growth and development. In keeping with this commitment, several courses in AML, Digital Money and Payments, Financial Inclusion and Customer Relations were undertaken during the year 2023.

As part of efforts to ensure that the regulatory regime remains relevant in the ever-changing financial ecosystem, emergent and current regulatory matters were discussed with other regional counterparts, and this will continue going forward.

Multilateral Caribbean Workshop on Maritime Sanctions Enforcement:

2023 also provided opportunities to participate in timely discussions at a regional conference on maritime sanctions enforcement hosted by the James Martin Center for Nonproliferation Studies. These discussions included contribution from Mr. Darwin Telemaque, CEO of the Antigua Port Authority and Chairman of Port Management Association of the Caribbean. Of significance, conference participants received critical insights on due diligence best practices for maritime stakeholders and were tutored in the analysis of real cases which could arise from deficient oversight



processes. Not surprisingly, conference participants were eager to point out the Antigua jurisdiction as an excellent real time case study given the Country's ongoing dispute involving a then sanctioned super yacht.

Key take-away – the conference underscored the importance of effective information sharing between regional and international authorities to ensure the enforcement of sanctions resolutions. As part of this initiative the Commission, as well as other relevant authorities, has partnered with the Ministry of Foreign Affairs to communicate sanctions resolutions with stakeholders.

In 2023, 43.22% of all new company registrations were associated with the international shipping sector. Therefore, information on maritime sanctions enforcement is of relevance to corporate management and trust service providers and provides a wealth of practical information which can be used to develop decision trees and other assessment tools to support the sector's involvement in this industry. **Anyone desirous of receiving copies of the conference presentations, which include practical information on the following themes, should contact the department.**

- Maritime Sanctions Handbook.
- Due diligence for Maritime Stakeholders.
- Sanctions Evasion Tactics.
- Avenues for Cooperation.
- Implementation Toolkit; and more.



STEP CARIBBEAN CONFERENCE 2023 (CC23)

- The Commission was also represented at the STEP Caribbean Conference 2023 which was themed, “Intrapreneurship – Driving Change in an Uncertain World.” Conference presenters tackled a range of evolving issues confronting trustees and their obligations to manage trust arrangements prudentially. Experts in trust law and administration highlighted necessary considerations which must be taken to ensure laws and trust structures meet the needs of the current generation. Participants were urged to avoid the unintended consequences or effects of law, especially in jurisdictions which may be lagging in recognizing the current world of gender fluidity and developing trends in family units. Presenters pointed to legislations in Canada and elsewhere which have moved away from ‘biology to intention’; thus, shifting towards inclusivity to cater for all groups, such as the LGBTQ. Influencers were informed that gender neutrality in legislations is a necessary move for the future, especially in dealing with non-traditional families and legal provisions on matters such as forced heirship. It was recommended that due to a changing paradigm, legislation and legal arrangements must be fit for purpose. Specifically, trustees were advised to consider the legitimate children in the context of a will or a trust. This is because trust laws and arrangements must now look at redefining terms, such as, spouse, parent, child, son, and daughter. The interpretation of law must also be considered for same-sex marriages and surrogate families.

Obviously, the above information has given greater focus to governing law provisions and the implications of what a state recognizes. However, for the time being, trustees and associated professionals are advised to be extremely specific in identifying people in documents and other legal arrangements as the intention of the law may not always align with reality.

Other topical issues discussed included:



- i) **Insolvent Trusts or Trusts with Insufficient Assets.** The conference considered case studies from Guernsey and Jersey. The latter examined deed of retirement and appointment (DORA) provisions and the indemnification of outgoing trustees against the likelihood of future trust liabilities.
- ii) **Dispelling Myths and Misperceptions about ESG.** A panel of presenters discussed the growing significance of environmental, social and governance (ESG) requirements and its relevance to wealth owners and fiduciaries. This term refers to a group of non-financial issues and factors which may have material financial impact. Contributors highlighted Canada, Japan and the USA as territories which have introduced legal provisions on ESG. Ultimately, this idea challenged participants to consider whether the fiduciary responsibilities of trustees can be truly upheld by ignoring the potentially material implications or consequences of ESG on investments and other decisions making processes.
- iii) **Practicalities of Trustees Holding Digital Asset.** The conference explored this topic and provided various dissuasive arguments against the proposition, especially in a post FTX era. While it was recognized that this idea breaks the barriers of conventional approaches to finance, it was also quickly acknowledged that it presented a myriad of challenges such as, knowledge gap in the administrative and regulatory space, financial

crime exposures and limited asset tracing techniques for law enforcement. During a series of spirited exchanges, one conference participant shared that, “we need to protect the assets...I would not keep the assets in the exchange”. Another opined that fiduciaries must remain risk averse while being pragmatic when dealing with trust assets. From my perspective, the salient message of this presentation could be summed up in the colloquial statement, “tek you time an wark fars”. In other words, it is important that trust professionals do not take on more than they can manage.

Since the FTX debacle many large exchanges have disclosed the assets in their wallets in a bid to restore confidence through greater transparency and disclosure.

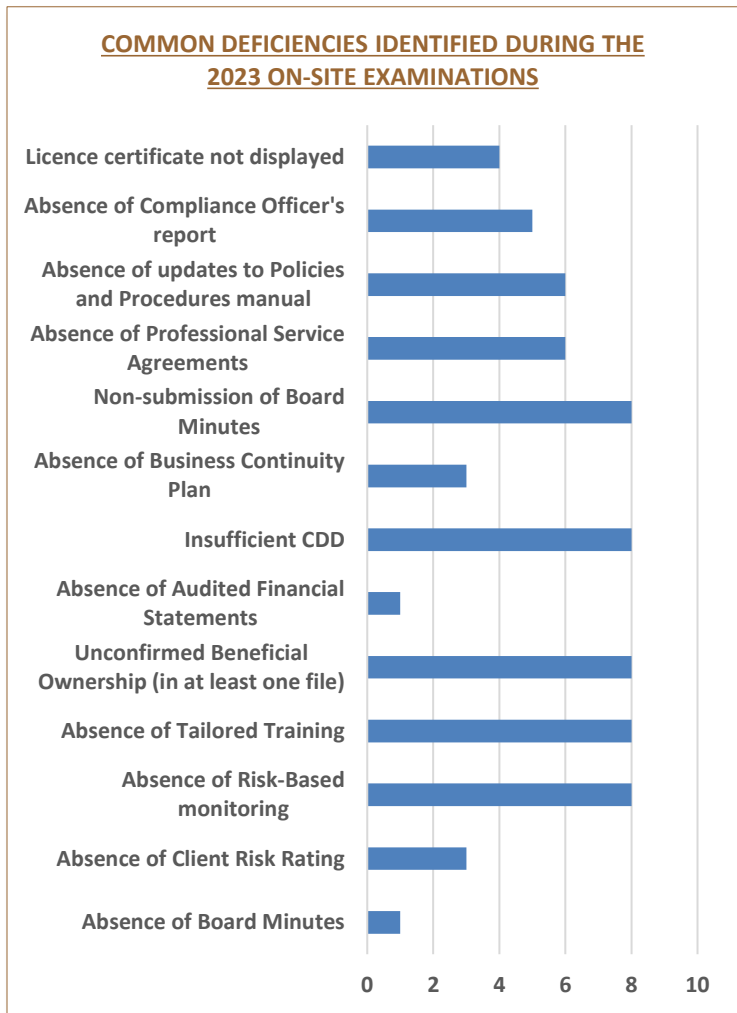
- iv) **Economic Substance - Trusts in the Crosshairs?** Economic substance is a term used to address the issue of BEPS or base erosion and profit shifting. It is part of a business taxation regime. However, it is not intended to cover personal wealth management arrangements, such as trusts. Nonetheless, consideration is now being given to the inclusion of trusts which are used in corporate structures to ensure transparency in tax compliance.



The above information is intended to provide readers with an overview of the salient themes discussed during workshops attended by the Manager, IBCs and CMTSPs, Bunny Govia-Butler, and may also include her views and opinions.

REGULATORY UPDATES - OVERVIEW OF THE 2023 EXAMINATION CYCLE - In 2023 the

department conducted 8 onsite examinations of corporate management and trust service providers. An analysis of the findings has revealed several deficiencies which are highlighted in the chart below.



Beneficial Ownership Identification - As seen in the above chart, challenges exist in confirming the identity of natural beneficial owners/s, in at least one instance of all examinations conducted in 2023. In other cases, doubt remains about the meticulousness and adequacy of internal processes used by corporate management and trust service providers to confirm

the natural beneficial owner/s, especially where ownership structures include the use of legal persons and arrangements.

The following information provides useful considerations that should be included in the process of confirming the natural beneficial owner of entities. This information was extracted from the [Beneficial Ownership Toolkit \(oecd.org\)](https://www.oecd.org/beneficial-ownership/) which provides greater details on the process of unveiling the natural beneficial owners.

IDENTIFICATION OF BENEFICIAL OWNER

IDENTITY OF A BENEFICIAL OWNER

Once the name of a beneficial owner has been provided, their identity should be validated. This includes checking to a reasonable extent that the natural person is who they claim to be. The information that could be taken to confirm this includes:

- Valid government- issued identity card.
- Valid government- issued passport.
- Driving license.
- Information from a government source or embassy confirming identity; and
- Reliable e- identity software.

This should be supported by credible publicly available information.

MEANS AND MECHANISMS OF OWNERSHIP AND CONTROL

In addition, information should be collected on why the natural person is the beneficial owner, such as:

- An extract of a shareholder registry showing ownership.
- Any nominee agreement that shows who exercises real control behind a shareholder arrangement.
- A shareholders' agreement that shows a natural person can control the shares of more than one shareholder, effectively giving control.
- Documentary evidence that the natural person can exercise a dominant influence over the legal person.
- Documentary evidence that the natural person has the power to appoint senior management; and
- Documentary evidence (for example, an employment contract) that a director or employee can influence the legal person.

PLEASE SHARE YOUR QUESTIONS & COMMENTS
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Financial Services Regulatory Commission

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