COLLAS CRILL

New amendment in BVI supercharges Financial Investigation Agency's powers

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Readers beware - the Financial Investigation Agency's (**FIA**) functions and powers have been extensively expanded.

FIA can now:

- order a freeze over bank accounts of its own volition and for a longer period of time;
- conduct what is commonly referred to as a dawn raid on premises (which includes vessels, aircraft and vehicles) to procure information which it believes is under threat;
- compel persons to give evidence under oath; and
- enforce new penalties for non-compliance, which includes fines and imprisonment.

These drastic changes to the Financial Investigation Agency Act 2003 (the **2003 Act**), which came into effect on 13 August 2021, were quietly ushered in by the Financial Investigation Agency (Amendment) Act 2021 (the **Amended Act**) over the summer break.

However, as was recently pointed out by FIA's Director, Errol George, in a written statement to the Commission of Inquiry (which was ongoing at the date of writing), FIA's inadequate funding raises questions as to the effectiveness of these new measures and how often these powers will in fact be exercised.

In this article, we handpick and summarise some of the most relevant key changes introduced by the Amended Act.

Overview of FIA

Briefly, FIA's functions are to investigate any suspected financial offences, the proceeds from financial offences and any matter referred to in financial legislation generally. It can launch investigations of its own volition or following certain types of requests made by the relevant domestic or foreign authorities.

FIA's Investigating Officers have all the powers of a police officer. Under certain circumstances, FIA can share information with foreign investigation agencies and domestic law enforcement agencies, but in any event must refer to the Police evidence of an actual or suspected criminal offence committed within the Territory of the British Virgin Islands.

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What are some of the key changes?

- **Freezing bank accounts for longer:** Under the 2003 Act, freezing orders over bank accounts could only be made following an external request. Now FIA can make orders of its own volition, and can impose a freeze on accounts for five *business* days.
- **Penalties for failure to comply with a freezing order:** non-compliance is a criminal offence and attracts fines of up to US$20,000 and/or imprisonment for a term not exceeding two years.
- **Dawn raids:** where FIA issues a notice requiring specified documents or information to be produced and there has been a complete or partial failure to comply with the notice, FIA may, under a prescribed set of circumstances, apply for a search warrant permitting it (accompanied by a police officer) to (amongst other things) enter and search premises, take possession of information and documents described in the warrant and use such force as is reasonably necessary to execute the warrant.
- **FIA can search vehicles, vessels and aircraft when executing a search warrant.**
- **Examination under oath:** FIA can now apply to have a person examined under oath before either a Magistrate or one of FIA's specified investigating officers. Failure to submit to an examination before an investigating officer attracts fines of up to US $10,000.
- **New powers to exchange financial intelligence with a wider audience:** FIA now has the mandate to exchange information for the purposes of co-operating with an international body of which FIA is a member, such as associations of financial intelligence units (FIUs).
- **Clearer investigative objectives:** FIA is permitted to investigate suspicious activity reports, identify specific targets for investigation, track activities and transactions and identify links between specific targets and proceeds from a range of criminal conduct.
- **Capacity to bring proceedings:** although always implied under the 2003 Act, the Amended Act now expressly confirms that FIA has the capacity to sue and be sued.

Pink perspective

FIA's new powers to exchange information with FIU associations reflect a wider regulatory trend to enhance international co-operation and extend investigative reach on a near global scale.

It also showcases the Territory's commitment to more aggressive regulation over financial crime and terrorist financing. Anyone caught by the legislation for whatever reason, should have a heightened awareness of the heavy-handed approach the Territory appears to be taking towards financial crime and its reaffirmation to support overseas investigations where it is able to lawfully do so.

In particular, corporate entities are encouraged to revisit their compliance policies and consider whether a procedure needs to be implemented to manage effectively its response to a search warrant, should one ever be presented.

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Please get in touch with David Harby or Nia Statham if you would like to draw on our experience of dawn raids or want further guidance.

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