

UPDATE

# Top 'take-aways' from the 2021 Mourant Regulatory Seminar

On 26 February 2021, Mourant held its annual Regulatory Seminar at the Ritz Carlton, Grand Cayman. The seminar included a presentation from the Cayman Islands Monetary Authority (**CIMA**) and a fireside chat with the Department for International Tax Cooperation (**DITC**), followed by an anti-money laundering/counter financing of terrorism (**AML/CFT**) training session for the directors amongst the attendees.

## 1 CIMA Update

Sarah Wheeler, Head of CIMA's Anti-Money Laundering Division and Angelina Partridge, Acting Deputy General Counsel of CIMA gave an insightful update to the audience, highlighting the following points:

- The industry needs to work on enhancing the understanding of AML/CFT risk in the Cayman Islands, both at the local level and to address international perceptions. CIMA published combined sectoral risk assessments in March 2020 and the Cayman Islands intends to work with other jurisdictions to help them better understand our AML/CFT and counter proliferation financing risks.
- The Cayman Islands is also currently engaging in a combined National Risk Assessment for publication in July 2021, which will include all sectoral risk assessments and virtual asset service providers (**VASPs**).
- CIMA has issued guidance notes on targeted financial sanctions, VASPs, ongoing monitoring, the risk-based approach and countering proliferation financing, as well as advisories and supervisory circulars on trust and corporate service providers and legal persons and arrangements, securities investment business registered persons and customer identification during COVID-19. Directors and service providers were strongly encouraged to read all advisories and circulars, rather than just those specific to their sector, for educational and preventative purposes.
- In relation to the administrative fines regime, it was noted that:
  - Procedures are now in place for serious and very serious breaches, with procedures for minor fines currently being finalised.
  - Entities may receive multiple fines where multiple breaches of the applicable legislation have been committed.
  - Over 1,300 enforcement actions were taken last year.
  - It is possible to offer to settle an administrative fine.

The speakers also briefly touched on the announcement that day that the Cayman Islands has been placed on the Financial Action Task Force (**FATF**) 'grey list', making the following observations:

- The FATF found that the Cayman Islands had met 60 out of 63 recommendations including all technical aspects of its inspection.
- The three remaining action points, which the FATF assessed as partly met, relate to enforcement by CIMA and the Registrar of Companies, and to the prosecution of money laundering offences by the Cayman Islands Bureau of Financial Investigations and the Office of Director of Public Prosecutions. These are to be

addressed by January 2022 (and May 2022 in the case of evidencing effective prosecutions). CIMA will continue to monitor regulated entities, taking prompt and robust action where appropriate.

## 2 DITC Update

Duncan Nicol, Director, DITC and Louise Somers, Head of Compliance, DITC joined Mourant regulatory partner, Sara Galletly for a fireside chat on recent developments. The highlights of the discussion are noted below:

### General

- Every framework which the DITC operates is under constant peer review by international bodies such as the OECD and the Global Forum. Once our legislation is approved and in place, the next phase of review will focus on effectiveness.
- Certain consultations are currently underway, including in relation to the introduction of mandatory disclosure rules following the OECD model, which relates to CRS avoidance and opaque offshore structures.

### Economic substance

- The economic substance (**ES**) submission deadline for entities conducting high risk IP-business and claiming to be tax resident overseas, of 28 February 2021, was driven by the deadline for international exchange of ES information by the DITC, of 31 March 2021. The deadline for all other ES returns is 30 April 2021.
- The DITC's **ES practice points** are updated regularly.
- The useful features of the ES 'smart forms' used for reporting on the DITC's portal were discussed, including the ability to correct submission/classification errors via those forms and how to file a 'nil' return.
- The DITC also explained their reporting requirements for liquidating entities.

### CRS and FATCA reporting

- The DITC Portal will open for 2019 and 2020 CRS reporting at the end of March/early April 2021, and the CRS filing declaration which forms part of the reporting package is already available.
- FATCA reporting will open in May 2021.

### CRS compliance form

- The deadline for submission of the CRS Compliance Form for both 2019 and 2020 is now 15 September 2021.
- The DITC have seen some CRS compliance form submissions and encouraged early completion and submission. FAQs to assist are available at <https://www.ditc.ky/crs/crs-faqs/>.
- In response to questions from the floor, the DITC confirmed that written CRS policies and procedure do not need to be in a fixed format but must be identifiable and accessible.

## 3 Directors' AML/CFT Training

Sara Galletly and Sandra Edun-Watler, Head of the Compliance & Reporting Services for Mourant Governance Services were joined by RJ Berry, Director, Financial Reporting Authority to give a complimentary training session on AML/CFT for directors of Cayman Islands investment funds and other special purpose vehicles. RJ Berry gave some insightful input on the FRA's new e-filing system for suspicious activity reporting.

Mourant would like to thank to all of our external speakers for making the regulatory seminar such a successful event.

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## Contacts

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**Hayden Isbister**  
Managing Partner, Cayman Islands  
Mourant Ozannes  
+1 345 814 9125  
hayden.isbister@mourant.com



**Hector Robinson QC**  
Partner, Mourant Ozannes  
Cayman Islands  
+1 345 814 9114  
hector.robinson@mourant.com



**Sara Galletly**  
Partner, Mourant Ozannes  
Cayman Islands  
+1 345 814 9233  
sara.galletly@mourant.com

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