

Top 'Take-Aways' from the 2022 Mourant Regulatory Conference

On 4 May 2022, Mourant held its annual Regulatory Conference at the Ritz Carlton, Grand Cayman. The conference, which was hosted by Mourant partner, Sara Galletly, included an opening message from the Minister of Financial Services and Commerce, a discussion on AML/CFT policies and procedures with the Cayman Islands Monetary Authority (CIMA) and a fireside chat on CRS and economic substance with the Department for International Tax Cooperation (DITC), followed by panel discussion with the Financial Reporting authority (FRA) on financial sanctions.

1 Opening address from the Minister of Financial Services and Commerce

In his opening address, the Honourable André Ebanks, MP, Minister of Financial Services and Commerce reflected on the continuing growth that the Cayman Islands financial services industry has seen, with registrations (especially partnerships) up again this year.

Minister Ebanks highlighted the Cayman Islands Government's significant progress in enacting regulations that uphold global standards and recognised that enforcement is one of the key mechanisms to ensure compliance with those standards. He also acknowledged local industry's continuing diligence in implementing regulatory requirements.

2 Q&A with CIMA on the importance of AML/CFT policies and procedures

Mike Jones, Managing Director of Mourant Consulting held a Q&A session with Sarah Wheeler, Head of CIMA's Anti-Money Laundering Division and Megan Powell, Deputy Head of CIMA's Anti-Money Laundering Division which highlighted the following points:

- A key focus for AML/CFT regulation is evidencing effectiveness; it is not sufficient to rely on written policies and procedures alone, there must be evidence of how they are implemented in practice.
- Self-audit and testing on an ongoing basis are therefore essential.
- CIMA expects very clear policies to be in place for sanctions procedures, including around reporting to the FRA and the process for freezing the funds of designated persons under financial sanctions. CIMA will be publishing a Thematic in this area soon (which Mourant will feature in the following Quarterly Regulatory Update).
- CIMA has also conducted a Thematic of its registered persons under the Securities Investment Business Act (as amended) (SIB RPS). Of those inspected by CIMA, a significant number were found to have outdated or inadequate AML/CFT policies and procedures. Further, many were unable to demonstrate how they had reached a risk rating as the risk methodology applied had not been documented.
- It is important to ensure AML/CFT policies and procedures are adequate and kept up to date. When adapting templates or group-wide policies, it is essential that those policies are properly tailored to the Cayman entity/ies.
- The importance of effective remediation and working with CIMA following inspections was noted.

- Cybersecurity is a big theme for 2022, particularly with emerging risks from hacking. Robust cybersecurity policies and procedures are critical for all financial service providers.

3 DITC update on CRS and economic substance

Louise Somers, Head of Tax Reporting at Mourant Governance Services held a fireside chat with Duncan Nicol, Director of the DITC and Craig Thomas, Head of Compliance at the DITC. The highlights of their discussion are noted below:

CRS

- Following the recent release of the CRS Enforcement Guidelines, the DITC confirmed that the key areas of focus for CRS enforcement will be:
 - missing the relevant reporting deadline (ie, for returns, declarations, and compliance forms);
 - misclassification; and
 - incorrect reporting (eg, missing TINs or dates of birth on the CRS return).
- The deadline for CRS reporting will be Monday 1 August 2022 as 31 July is a Sunday this year.
- The DITC confirmed that there will be no change to any of the CRS forms for 2021 reporting.
- The Cayman Islands' effectiveness in implementing the CRS standard is currently under review internationally (alongside 100 other jurisdictions). The results of the review will be publicly available in Q3/Q4 of 2022.
- The CRS standard itself is also under review. The CRS regulations could therefore potentially be updated next year to reflect these changes, although there would likely be no effect on reporting, if any, until 2024.

Economic substance (ES)

- ES is under review internationally. Cayman is currently considered 'not harmful' and the aim is to maintain this designation as one consequence of a poor rating is a potential EU listing. We should expect to hear the result of the review of the Cayman Islands later this year.
- The DITC recently published ES enforcement guidelines. The DITC confirmed that entities will shortly be penalised for missed reporting for the ES notification year 2020.
- Common errors or areas of confusion for ES were noted to be:
 - incorrect ES notification year listed on the ES notification; the year should be the calendar year in which the financial year commences;
 - uploading consolidated financial statements or incomplete books of account; and
 - classification errors (particularly regarding holding companies).
- The ES return will be updated for partnerships in due course (with no date for release yet). There are no other expected changes to the ES forms.
- The key resources on the [DITC website](#) are the [ES Practice Points](#), [CRS FAQs](#) and the [Updates Bulletin](#).

Horizon scanning

- An incoming OECD initiative to be aware of is the Crypto-Asset Reporting Framework (known as the **CARF**).
- The consultation on the Mandatory Disclosure Rules (**MDR**) could mean that draft regulations will be published in due course. These will follow the OECD model which focusses on CRS anti-avoidance and opaque offshore structures. No implementation date has been set as yet.

4 Panel discussion with the FRA on financial sanctions

Mourant partners Hector Robinson and Simon Dickson held a panel discussion with RJ Berry, Director of the FRA, Kim France, Sanctions Coordinator at the FRA and Sandra Edun-Watler, Head of Compliance & Reporting Services for Mourant Governance Services. Interesting points to note were as follows:

- Over 600 compliance reporting forms (**CRFs**) have been filed since March (normally the FRA would receive 10 per year) in relation to 50 'core' designated persons, with around 100 related suspicious activity reports (**SARs**) also filed.
- 12-15 Cayman funds have been frozen due to being majority owned or controlled by a designated person.
- A **Joint Task Force** (chaired by RJ Berry) was established by the Cayman Islands Government in March 2022 to coordinate, identify and implement policy amendments in relation to the Russia sanctions regime.
- Assets with an estimated value of \$7.3bn have been frozen since the beginning of the Russia sanctions regime.
- It is essential to consider the extra-territorial effect of other applicable sanctions regimes, such as that of the US Office of Foreign Assets Control (**OFAC**).
- It was noted that under the US and EU Russia sanctions regimes, assets of designated persons are aggregated, so that where a number of minority investors together hold 50% or more of an entity, that entity is considered to be owned by a designated person(s). However, there is no such aggregation under the UK/Cayman sanctions regime unless there is evidence of a joint arrangement.
- The question of establishing control where there is not a direct link to a designated person was raised, with the FRA confirming the need to document the basis for any determination. With trusts, in particular, the question of control can be very complex.
- The expected time frame for the review and approval of a specific licence application by the Cayman Islands is 4-6 weeks, after which time it is sent to the UK Foreign, Commonwealth and Development Office (**FCDO**). There is no time frame for the FCDO approval process. The Cayman Islands has submitted one specific licence to the FCDO to date.

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

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