

# Top 'take-aways' from the 2023 Mourant Regulatory Conference

On 23 March 2023, 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 Cayman Islands Minister of Financial Services and Commerce, an update from the Cayman Islands Monetary Authority (CIMA), a session on Cayman's beneficial ownership regime and an industry update from the Financial Reporting Authority (FRA) and the Department for International Tax Cooperation (DITC).

## 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 continuous progress which the Cayman Islands has made in meeting Financial Action Task Force (FATF) recommendations. The Cayman Islands will have the opportunity to present further progress on the remaining recommended action, relating to investigations and prosecutions of money laundering cases, at the FATF Joint Group's review meeting in May, and again at the FATF plenary in June. If these representations are successful, the FATF hopefully will authorise an on-site inspection which could potentially result in the Cayman Islands being eligible for delisting in October 2023, assuming the on-site inspection has gone well.

The Minister provided additional insights into upcoming developments for the industry, with potential growth in the reinsurance and virtual assets spaces. A top priority is to enhance the perception of the Cayman Islands globally and build relationships with key jurisdictions.

## 2 CIMA update

Sandra Edun-Watler, Head of Compliance & Reporting Services for Mourant Governance Services, chaired a discussion with Rohan Bromfield, Head of Fiduciary Services Division and Abubakar Nyanzi, Deputy Head of the AML/CFT Division from CIMA. The following points were highlighted:

- CIMA takes a risk-based approach in determining the scope, frequency, and intensity of its AML/CFT supervision, taking into consideration of the regulated entity's risks and inherent risks identified in the National Risk Assessment and Sectoral Risk Assessments.
- AML/CFT supervision is undertaken both on-site (via inspections) and offsite (via information received from reporting).
- Over 80 AML/CFT on-site inspections were conducted last year with the focus on higher risk sectors (such as the securities, banking and trust and corporate service providers sectors).
- Although AML/CFT has been a key focus in recent years, it should be remembered that CIMA is responsible for the oversight of many areas. In particular, the importance of cybersecurity controls was emphasized, with reference made to the related CIMA [Rule](#) and [Statement of Guidance](#).
- Risk and context are key concepts for CIMA as they look to ensure regulated entities are establishing the risks faced in the context of their business. Whatever risk systems are in place must adequately demonstrate (and document) that all relevant risk factors have been considered.
- It is crucial for regulated entities to tailor policies and procedures to ensure that they are proportionate to the nature, size, and complexity of the business that demonstrate their compliance with the

applicable laws and regulations. CIMA is looking to understand the business of the licensee and the specific risks involved.

- Regulated entities must ensure that policies and procedures are regularly reviewed to establish that they remain fit for purpose. Complaints handling procedures must also be fit for purpose and tested regularly.
- It is important to have an effective business continuity plan. Industry should use the lessons gained from the pandemic and continue to plan for possible risks in the future. Staff should receive regular training in this respect.
- Corporate governance continues to be a focus. Senior management must be aware of their responsibilities and should ensure to ask the right questions and document the same.
- Outsourcing is another recurrent theme, and it is important to remember that the regulated entity retains responsibility for the oversight of any outsourced activities.
- CIMA will continue to engage through outreach programmes with the industry stakeholders to further promote awareness of regulatory requirements.

### **3 Beneficial ownership update**

Micah Coleman, Senior Regulatory Advisor at the Ministry of Financial Services and Commerce gave an insightful presentation regarding an industry consultation, which launched on the day of the conference, relating to the Cayman Islands beneficial ownership regime.

The consultation draft legislation aims to incorporate all of the Cayman Islands beneficial ownership legislation into one act (as it is currently contained in the separate acts for the relevant entities affected). Some of the key features of the draft Bill are detailed below.

#### **Additional particulars**

- To align with FATF standards, the required reporting will include additional details of nationality of the beneficial owner and of the mechanism by which the beneficial owner operates control (eg, via voting rights, shares or ultimate effective control).

#### **Routes to compliance**

- The draft legislation will replace the current exemptions from compliance with differing routes to compliance because information for 'exempted' entities is not currently being effectively accessed within the required timeframe. This will be relevant for legal persons that are listed on a recognised stock exchange (or their subsidiaries), licensed under a regulatory law, exempted by Cabinet or funds registered under the Private Funds Act (2021 Revision) or Mutual Funds Act (2021 Revision).
- These changes will mean that previously 'exempted' legal persons that are funds registered under the Private Funds Act (2021 Revision) or Mutual Funds Act (2021 Revision) would no longer need to file a written confirmation of exemption and instead will be required to file a contact name of a person in the Cayman Islands who will provide the requisite beneficial ownership information in response to a request from a competent authority within the required timeframe (which could be short as 24 hours depending on the mechanism for request).

#### **Corporate service providers**

- The draft Bill places more responsibility on corporate service providers (CSPs) as the first line of defence.
- CSPs will need to review required particulars and take reasonable measures to verify the identity of the beneficial owner using information obtained from reliable sources. Where this overlaps with verification for AML/CFT purposes, there is no need to complete the same verification twice.

#### **Timeline**

- The consultation period closes on Tuesday 25 April 2023.

### **4 FRA and DITC updates**

In the final session of the day, host Sara Galletly was joined by Duncan Nicol, Director of the DITC, Kim France, Sanctions Coordinator at the FRA and Mike Jones, Managing Director of Mourant Consulting for a

discussion on sanctions, tax reporting and compliance tips. The highlights of the discussion are noted below.

### Sanctions - FRA

- The Governor of the Cayman Islands is the Competent Authority for sanctions implementation in the Cayman Islands and can only issue a licence with the consent of UK Secretary of State.
- The FRA received over 1000 Compliance Reporting Forms (**CRFs**) related to Russia sanctions during the period of 1 March 2022 to 17 March 2023. A total of approximately US\$8.84 billion and €298.6 million were reported as being held by or on behalf of persons designated under the Russia sanctions regime. In addition, the FRA has received 187 suspicious activity reports (**SARs**) related to the Russia sanctions. Prior to 2022, the FRA did not formally track CRFs but estimates 5-8 were received in the previous year.
- 24 licence applications have been received during the period, of which two have been granted and six have been refused.
- The General Licence (GL/2022/0001) for relevant investment funds or fund managers is set to expire on 4 April 2023. The FRA has submitted a request for a six-month extension.
- There have been two other general licences granted, one in relation to the oil price cap and the other for trust services.
- The fund industry must remember the importance of good governance. Although sanctions compliance can be delegated to the CSP, the directors of the fund retain the ultimate responsibility for oversight and compliance, and must ensure that they are up to date on the constantly evolving sanctions regime.

### Tax reporting - DITC

- The importance of good governance was also reiterated in relation to tax reporting obligations. The DITC having observed that those who are ultimately responsible for an entity are not adequately supervising their delegated responsibilities or asking the right questions of their service providers.
- Looking to the year ahead, it is likely that we will see an increasing number of penalties issued so it is imperative not to become complacent in relation to reporting obligations, particularly CRS.
- All tax reporting frameworks (other than FATCA) are subject to peer review. Cayman achieved the highest rating of "On Track" in the first CRS peer review. The second peer review of all jurisdictions, which will not be completed until 2025, will begin shortly, with an on-site visit to the Cayman Islands in Q4 2023.
- The updated lists of reportable and participating jurisdictions for CRS will also be published in the next few weeks.

### Compliance tips – Mourant Consulting

- A regulated entity's business risk assessment is the key document in eyes of the regulator. It sets the tone for the first impression of a business. It is essential that it is relevant to the business and tailored accordingly.
- The three key areas that regulators consider are operational risk (including strategic risks, HR risks etc), financial crime risk (AML/CFT/CPF/sanctions) and compliance risk.
- It is crucial to remember that risk assessments are not just about the documents themselves. The whole process surrounding the documentation should be evidenced (eg board minutes which set out proper debate) and regularly reviewed.
- There is no right or wrong way to prepare a risk methodology but your methodology should be documented. Typically, they are prepared in Excel with a separate executive summary. It is helpful to have a column on risk ownership.
- The CIMA consultation draft rules and statements of guidance on corporate governance and internal controls for regulated funds will, if adopted as drafted, raise the bar on what is expected (and will extend to more entities than before).

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

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