

UPDATE

Top 'take-aways' from the 2024 Mourant Regulatory Conference

On 29 February 2024, Mourant held its annual Regulatory Conference at the Kimpton Seafire Resort, Grand Cayman. The conference included an opening message from Her Excellency the Governor, Jane Owen, a conversation with the Department for International Tax Cooperation (DITC), a session on cross-border regulatory issues, a strategy update from the Cayman Islands Monetary Authority (CIMA) and a presentation on the incoming changes to the Cayman Islands beneficial ownership regime.

1 Opening address

In her opening address, Her Excellency the Governor, Jane Owen reflected on the huge contribution that the financial services industry makes to the Cayman Islands and the importance of protecting and promoting the jurisdiction. She noted the high levels of professionalism and collaboration demonstrated by the financial services industry which, coupled with the level of confidence created by the jurisdiction's commitment to the regulatory sphere, have been key to the success of the industry. Her Excellency also congratulated all of those involved in ensuring that the Cayman Islands was successfully removed from the FATF grey list.

2 Conversation with the DITC

Louise Somers, Head of Tax Reporting Services at Mourant Governance Services chaired a discussion with Peter Stafford, Deputy Director, DITC and Craig Thomas, Head of Compliance, DITC. The conversation focussed on the current international tax landscape, with particular focus on the CRS and economic substance regimes. The highlights of the discussion are noted below.

Common reporting standard (CRS)

Key CRS obligations for funds

- *Classification and registration on the DITC Portal* - It is hugely important to classify the 'financial institution' (FI) correctly and issues frequently arise due to misclassification.
- *Reporting* – When it comes to reporting, the required due diligence procedures are quite complex and involved. It is therefore important to pay attention to the detail. Once the process is understood, it should be not difficult to administer the required analysis of account holders and controlling persons. Account holders and controlling persons that are reportable persons must be reported to the DITC by 31 July each year. The related filing declaration will constitute a confirmation that reporting obligations have been completed, and a nil return for all jurisdictions where there is nothing to report.
- *CRS Compliance Form* - This must be completed by 15 September each year and assists the DITC in gathering more information on the structure of the FI (including its due diligence procedures and details of any non-reportable accounts). The DITC encouraged service providers/FI's to take the time to ensure this form is being completed accurately as it will be under increased scrutiny by the DITC this year.
- *Record keeping* – It is important to ensure records are complete and maintained securely.

Enforcement

The Cayman Islands is currently being assessed on the effective implementation of the CRS and will receive the results of its assessment in 2025. It is therefore crucial for the jurisdiction to be able to demonstrate

effectiveness. The DITC is therefore placing increased emphasis on compliance and enforcement, with a focus on the quality of information received (ie, due diligence procedures must be carried out). If any information is missing or returns are due but not made, the DITC will take action. Additionally, the DITC intend to begin penalising entities that fail to file DITC compliance forms.

CRS audits

Any CRS information reported to the DITC is exchanged with other jurisdictions and checked against information they have received domestically. The DITC will also carry out corresponding checks on information it receives. Any inconsistencies may form the basis for an audit request. It is therefore important to have the information on hand to be able to respond in a timely and accurate manner.

Issues that the DITC come across are:

- self-certification forms which have not been collected
- self-certification forms which do not include a tax identification number (TIN) or jurisdiction of tax residence
- completed self-certification forms where the information is not reflected into a CRS XML tax return
- completed self-certification forms which do not match to the underlying AML/KYC documentation.

Self-certification forms must be matched to information collected under AML due diligence procedures. However, there are gaps between the two regimes. For example, the CRS requires reporting of a TIN and jurisdiction of tax residence. Errors are frequently made where it has been assumed that the jurisdiction of tax residence is the same as a person's nationality or passport. The CRS requires a TIN to be reported for all persons included in the report with very limited exceptions.

CRS training

There is no express requirement for service providers to receive CRS training. However, it is implicit that those doing the day-to-day work of collecting the information should have received the appropriate training.

Economic substance (ES)

All entities must complete an ES notification (ESN) each year as a prerequisite to their annual return. Investment funds remain out of scope of ES but must still file an ESN to that effect. It is important to remember that ES now applies to partnerships, which is a particular focus of the EU.

Issues that the DITC come across are:

- Changes in classification or misclassification can result in failure to report. It is key to get the classification in the ESN correct and review regularly.
- Important to get ESN year correct; the ESN year which is applicable is the start of the financial year.
- Classification as an investment fund does not mean that compliance activities are not necessary. The entity must be able to evidence that it meets the definition of an 'investment fund' and ensure that the entity has a GIIN, CIMA registration number and/or FI number with the DITC (or have an explanation as to why these numbers are not required).
- More enforcement action is being taken in relation to misreporting. If no remediation is made and the DITC have no evidence that the ES test has been passed, the DITC will penalise accordingly.
- For those entities filing ES returns, ensure that any financial statements included are complete and accurate (ie, not consolidated statements but those that apply directly to the entity).

Horizon scanning

The Crypto-Asset Reporting Framework (CARF) is a new OECD global standard for the automatic exchange of information on crypto assets. It is anticipated that the first exchanges of information under CARF will be made in 2027. The process of policy development has therefore commenced, and draft legislation is expected to be published for consultation in Q4 2024. In advance of implementation, corresponding CRS amendments will be made.

CRS 2.0 is anticipated to come into force within the same time frame and the legislation is currently in preparation stage and based on the OECD model. Some practical changes introduced by CRS 2.0 will be

broader definitions of 'financial assets' (to include crypto assets) and of 'depository institution' (to include those holding electronic money products and central bank digital currencies). It will also introduce a new CRS XML Schema 3.0 which will have an impact on due diligence requirements.

3 Cross-border regulatory issues

Mourant partner Peter Hayden and Mike Jones, Managing Director of Mourant Consulting considered the frameworks in place for international cooperation in relation to criminal, tax and regulatory matters. The discussion looked at some of the practical problems that arise regarding requests for assistance received from foreign authorities, noting some of the pitfalls and considering best practice in terms of dealing with a request. The following points were highlighted:

- International assessments are becoming more frequent and complex. Having just gone through 4th Round Mutual Evaluation by the FATF, it is important to be aware that the 5th Round Mutual Evaluation will be even more complex, resulting in increased regulation.
- There will be an increased focus on enforcement as regulatory authorities are required to demonstrate that supervision and enforcement is risk-based, effective and produces the right outcomes.
- We will also see increased sharing of information and reliance on data.
- The resourcing challenges in risk and compliance teams and within the regulators are creating issues on both sides.
- Be mindful that the regulators may not have dealt with a particular issue or request before and that they are equally finding their way at times.
- It is sensible to think about the long-term relationship with the regulator. Co-operation on international assistance and successful approaches to remediation does have a dramatic impact on your future regulatory risk profile. It is advisable to create the right narrative and give the right impression in relation to culture and approach to risk and compliance.
- Whether you are the regulator or the regulated, given the complication and importance of the frameworks for international cooperation, do not be afraid to ask for assistance and guidance, and keep communication lines open.

4 Navigating the Future: Regulatory Updates and Focus Areas for CIMA

Cindy Scotland, OBE, Managing Director of CIMA gave an informative update on recent developments and the implementation of CIMA's Strategic Plan for 2024-2026 in preparation for the 5th round of mutual evaluation.

Strategic Plan for 2024-2026

The primary goals for this period encompass digital transformation, enhancing financial services regulation, and bolstering efforts to combat financial crime. Some key points are as follows:

- The online REEFS platform is the first in the order of priorities. As digitization continues to grow, CIMA intends to adopt AI-powered tools to streamline regulatory reporting and compliance processes for financial institutions.
- CIMA is refining its AML supervisory framework by collaborating with relevant authorities and endeavouring to offer clear guidance to empower regulated entities against evolving threats.
- CIMA will continue to work on aligning legislative and regulatory obligations, developing robust supervisory frameworks for diverse sectors and mobilising the necessary resources to uphold international standards.

AML and VASPs

CIMA continues to be at the forefront of AML supervision with an emphasis on sanctions, virtual assets service providers (VASPs) and other high-risk sectors. A notable initiative was the commencement of onsite AML supervision for VASPs, with the first onsite inspection reports of VASP registrants expected to be issued shortly.

The data collected from the VASP travel rule return and the annual AML survey will be used to better understand the risk exposures associated with VASPs. This analysis will play a crucial role in prioritising inspections, shaping the focus of examinations and contributing to the formulation of the inspection plan for 2024 onwards.

The AML Guidance Notes were amended in 2023 in relation to electronic and remote customer due diligence. Further revisions to the AML Guidance Notes are expected in 2024 to address the VASP travel rule, improve the format to reduce complexity and provide effective sector specific guidance.

CIMA is committed to working in collaboration with the Ministry of Financial Services & Commerce in preparation for the implementation of phase 2 of the VASP regime, which will introduce a more comprehensive supervisory regime.

Registered Persons

CIMA is actively working to implement an enhanced framework for securities investment business registered persons by addressing identified weaknesses in the regime. Legislative amendments to extend essential requirements to registered persons are at the proposal stage. Any changes, whether legislative or regulatory, will be subject to consultation.

Environmental, social and governance (ESG)

In response to the potential impact of ESG factors on investment funds and sustainable financing, CIMA is taking proactive steps and has prepared recommendations for considering a climate risk and ESG supervisory framework. A related [Climate Change and Environmental-Related Risks Survey](#) will assist in determining the next steps.

5th Round MER

CIMA have already begun preparations for the 5th Round Mutual Evaluation by the FATF which will take place in 2027. This includes a review of lessons learned, a national risk assessment and making the necessary adjustments to ensure compliance with any revised standards. The FATF will expect to see significant upgrades from our 2023 inspection, with more being done.

5 Implementing beneficial ownership in the Cayman Islands

Mourant partner Sara Galletly presented an overview of the incoming changes to the beneficial ownership regime which will be introduced by the Beneficial Ownership Transparency Act, 2023 (the **Act**) once in force, together with some tips on what to look out for in relation to these new changes. As the Act is expected to be implemented later in the year, the session considered the preparations that can be made ahead of implementation, noting that accompanying regulations and guidance are expected to be circulated for industry consultation in the next quarter.

Key definition changes

The Act will expand the scope of beneficial ownership regime with a new definition of 'legal person' which will continue to include companies, LLCs, LLPs but now also extend to limited partnerships, exempted limited partnerships and foundation companies. The definition will not extend to foreign companies or trusts.

The definition of 'beneficial owner' will be amended, including 'senior managing officials' where no other beneficial owner has been identified in accordance with the new definition. As 'senior managing official' includes directors, this will result in every company being required to have a beneficial owner identified in practice. The Act also introduces the concept of a 'reportable legal entity' (**RLE**) (in place of the previous 'relevant legal entity'), with this definition notably not now restricted to Cayman entities.

Practically speaking, it will therefore be important for Cayman corporate service providers to check their books of business to:

- identify those additional entities which will be in scope under the new regime;
- identify those existing corporates who currently have no beneficial owner identified; and
- capture any additional RLEs.

Entity obligations

The required particulars which must be obtained in relation to beneficial owners and RLE will change to require additional information such as:

- the nature in which the individual/RLE owns or exercises control of the legal person;

- for individuals, their nationality; and
- for RLEs, the register in which it is entered and registration number.

RO/CSP obligations

The Act will place obligations on the registered office provider to:

- establish and maintain a beneficial ownership register containing adequate, accurate and current information;
- regularly deposit beneficial ownership information in the prescribed form and frequency;
- provide the competent authority with confirmation of a legal person's category;
- provide required particulars for each category of legal person; and
- review the required particulars provided and take reasonable measures to verify the identity of the individual beneficial owner/RLE using reliable sources.

Exemptions vs categories of legal person

The Act will introduce alternative routes to compliance for certain categories of legal person, which will replace the 'exemptions' to maintaining a beneficial ownership register under the current regime. These will include:

- listed entities and their subsidiaries;
- licensed Cayman entities but not their subsidiaries; and
- regulated fund vehicles but not their subsidiaries.

These changes will require regulated funds to appoint a beneficial ownership principal point of contact, which must be a regulated service provider in the Cayman Islands. Additionally, general partners, unregulated funds, potentially all downstream vehicles and registered persons under the Securities Investment Business Act (2020 Revision) and the Virtual Asset Service Providers Act (2024 Revision) will need to establish beneficial ownership registers.

Access to information

Access to information (which was previously limited to the Royal Cayman Islands Police Service, Financial Reporting Authority, CIMA, Anti-Corruption Commission and Tax Information Authority) will be widened to include:

- Maritime Authority
- Civil Aviation Authority
- Registrar of Lands
- Entities undertaking procurement
- Supervisory authorities of DNFBNs (DCI, CIIPA, CILPA)
- Licensed financial institutions
- Designated non-financial businesses and professions (DNFBPs).

The competent authority will be empowered to charge fees for access to information on the platform and may elect to provide information, provide access or execute a search on behalf of entities other than DNFBNs and licensed financial institutions.

The Act contains provisions such that the Cabinet may, in the future and subject to an affirmative resolution in the Parliament of the Cayman Islands, make regulations empowering the competent authority to provide certain beneficial ownership information to members of the public.

For further information, please see our update: [Changes to the Cayman Islands beneficial ownership regime – what you need to know](#).

Mourant would like to thank our external speakers for their part in making the regulatory conference such a successful event.

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