

How Offshore Firms Are Assisting Investment Managers in an Increased Regulatory Environment

The increased volume of global regulatory laws over the past few years has impacted every aspect of the investment funds industry, including the Cayman Islands as a jurisdiction. In this environment of continued rising regulation, Nick Harrold shares some insight into how his firm is assisting investment managers in Asia to stay abreast of regulations that may impact their Cayman Islands Investment Funds.

How has the regulatory landscape been changing in the Cayman Islands?

Changes in the Cayman Islands regulatory landscape have reflected both developments in international regulatory standards and international inter-connectivity. More recently, the first major change was the implementation of FATCA, closely followed by the OECD's Common Reporting Standard ("CRS"), pursuant to which there is reporting of financial account information to the Cayman Islands Tax Information Authority ("TIA"), which in turn exchanges such information with counterparty tax authorities. However, the Cayman Islands had previously been party to bi-lateral and multilateral treaties enabling the provision of such information on request to most jurisdictions.

The Cayman Islands, as for other neutral tax jurisdictions, has also implemented legislation to address OECD and EU initiatives (based on transfer pricing rules), in relation to establishing economic substance for certain businesses, which is overseen by the TIA.

Similarly, although there has been a recent focus on the country's anti-money laundering ("AML") regime, the Cayman Islands has had FATF equivalent AML legislation for over 20 years. The current updates are designed to reflect the FATF's own updated standards, including expectations in terms of effective implementation and enforcement.

Recently, the jurisdiction introduced the Private Funds Law, which resulted in over 12,300 private funds becoming subject to registration with and regulation by the Cayman Islands Monetary Authority ("CIMA"). Such private funds are subject to prudential regulation in line with global standards applicable to collective investment vehicles. Regulation has also kept pace with fintech innovations with the introduction of the Virtual Asset Service Providers regime and cybersecurity obligations for certain CIMA regulated entities.



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What effect has this increase in regulations had on promoters' and investors' views on the use of the Cayman Islands as an investment funds jurisdiction?

There has not been a noticeable change in views of the Cayman Islands, or its use, since most promoters and investors understand that the increase in new regulations is being driven by globally agreed standards that are or will be implemented in every relevant investment funds jurisdiction. Accordingly, investment funds will be subject to analogous standards wherever they are established. The reasons why promoters, investors and other market participants have historically viewed the Cayman Islands as a leading funds jurisdiction, including but not limited to, investor familiarity, flexibility, cost and speed to market, as well as it being a tax neutral platform, all still hold true.

How have international organisations, such as the OECD and the EU, responded to the Cayman Islands changing regulatory landscape?

The Cayman Islands is committed to meeting global standards in accordance with agreed timelines. The OECD's Forum on Harmful Tax Practices as at November 2020 gave the Cayman Islands its highest rating of "not harmful". The European Union also affirmed that it considers the Cayman Islands to be a fully cooperative jurisdiction for tax purposes during a meeting with EU Finance Ministers comprising the Economic and Financial Affairs Council ("ECOFIN") in October 2020 by removing it from its Annex I list of non-cooperative jurisdictions for tax purposes.

How are clients seeking to comply with the new regulatory requirements?

The increase in regulations has led to an increase in outsourcing. Outsourcing to service providers, including to Maples Group, allows managers to leave the heavy lifting of the regulatory compliance and reporting duties to specialised experts, thereby gaining greater time and flexibility to focus on the core business of generating returns for investors. In addition, it ensures that important deadlines and regulatory filings will not be missed.

How are you assisting clients with the increase in regulations?

On the advisory side, we have significantly expanded our global Regulatory practice over recent years. The Regulatory team, currently comprised of lawyers in five locations, both advises clients directly and assists our investment funds specialist lawyers in ensuring that they are abreast of the latest regulatory developments so as to advise clients with their regulatory questions.

We provide frequent client updates on new regulatory and compliance requirements as they arise and the Regulatory team produce a very popular 15-minute monthly webcast called The Regulatory 15/15 which succinctly discusses and explains the latest regulatory developments in the Cayman Islands. This webcast is published on maples.com and our social media channels on the 15th day of each month.

In response to a rapidly evolving regulatory landscape, we have developed a number of specific new service lines to support clients. For example, the Maples Group now provides a full suite of Anti Money Laundering services (including the provision of AML officers), AEOI services, economic substance solutions and related services, as well as various other regulatory services.

Any other thoughts?

While increases in global regulatory standards can lead to increases in cost, they also provide a more secure environment for international business. Given the commitments of the Cayman Islands Government and its service providers to adapt and respond to changes in international regulatory standards, the Cayman Islands is very well placed to continue its market-leading position as a leading jurisdiction for the establishment of investment funds.