



Asset Management updates

**Regulatory
and Tax Updates**

October 2020



Agenda

- **Regulatory Compliance updates**
- **Cyber security and privacy themes**
- **Internal Audit,
Risk & Compliance Services
- Governance through COVID-19**
- **ESA and US Tax updates**



Regulatory compliance



Introducing the presenter



Maria Lingham
Senior Manager

Mutual Evaluation of Bermuda (MER)

Published in January 2020

- Bermuda was measured against the FATF 40 recommendations and FATF's 11 immediate outcomes
- Bermuda was ranked amongst the top six of all MERs published to date in relation to overall level of effectiveness
- Bermuda's compliance with the Technical compliance requirements is the highest of any jurisdiction of MERs



Anti-money laundering and counter-terrorist financing measures

Bermuda

Mutual Evaluation Report

January 2020

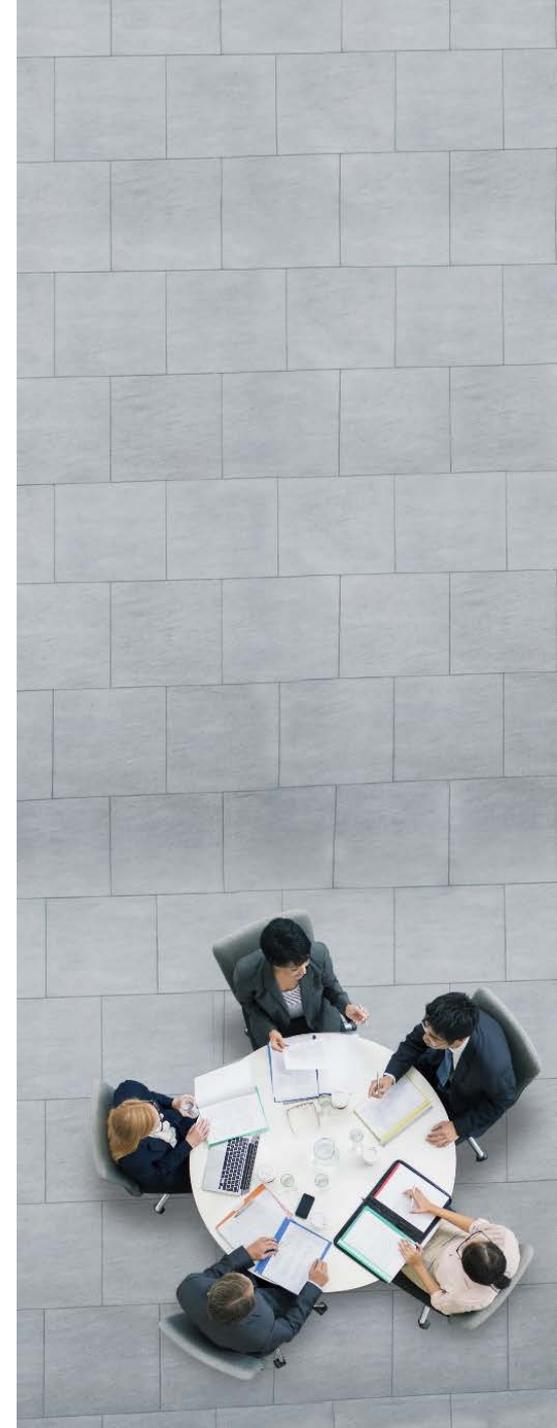


Regulatory reminders

Annual Training

- AML / ATF
- Sanctions
- ABC

- AML/ATF independent audits
- Risk assessments
- P&P updates



AML / ATF compliance challenges

Common AML / ATF audit findings:

- P&Ps not updated regularly
- Sanctions not sufficiently addressed
- CDD records not well structured
- Ongoing monitoring schedule not maintained
- No board approval for P&Ps
- Risk assessments inadequate or missing
- Limited outsourcing policy

FATCA / CRS Deadlines

- FATCA – 31 March
- CRS – 31 May





Cyber security and privacy themes

**Security and privacy themes
and trends impacting you today**

**KPMG Bermuda
October 2020**



Introducing the presenter



Max Graupner
Manager,
IT Advisory

Five hot topics

1. Increased privacy scrutiny

Increased scrutiny from customers and regulators around privacy of personal data.

2. Need for cyber risk management

Heightened focus on effective cyber risk management processes and controls, including timely reporting of breaches or regulators and impacted customers.

3. Need for robust third party risk management

More robust oversight over third parties which means: i) potential inquiries into your IT practices as a service provider and ii) your oversight over your third parties.

4. Impact of COVID / remote work force

Impact of COVID on your day to day operations as a service provider, and related data and security risks.

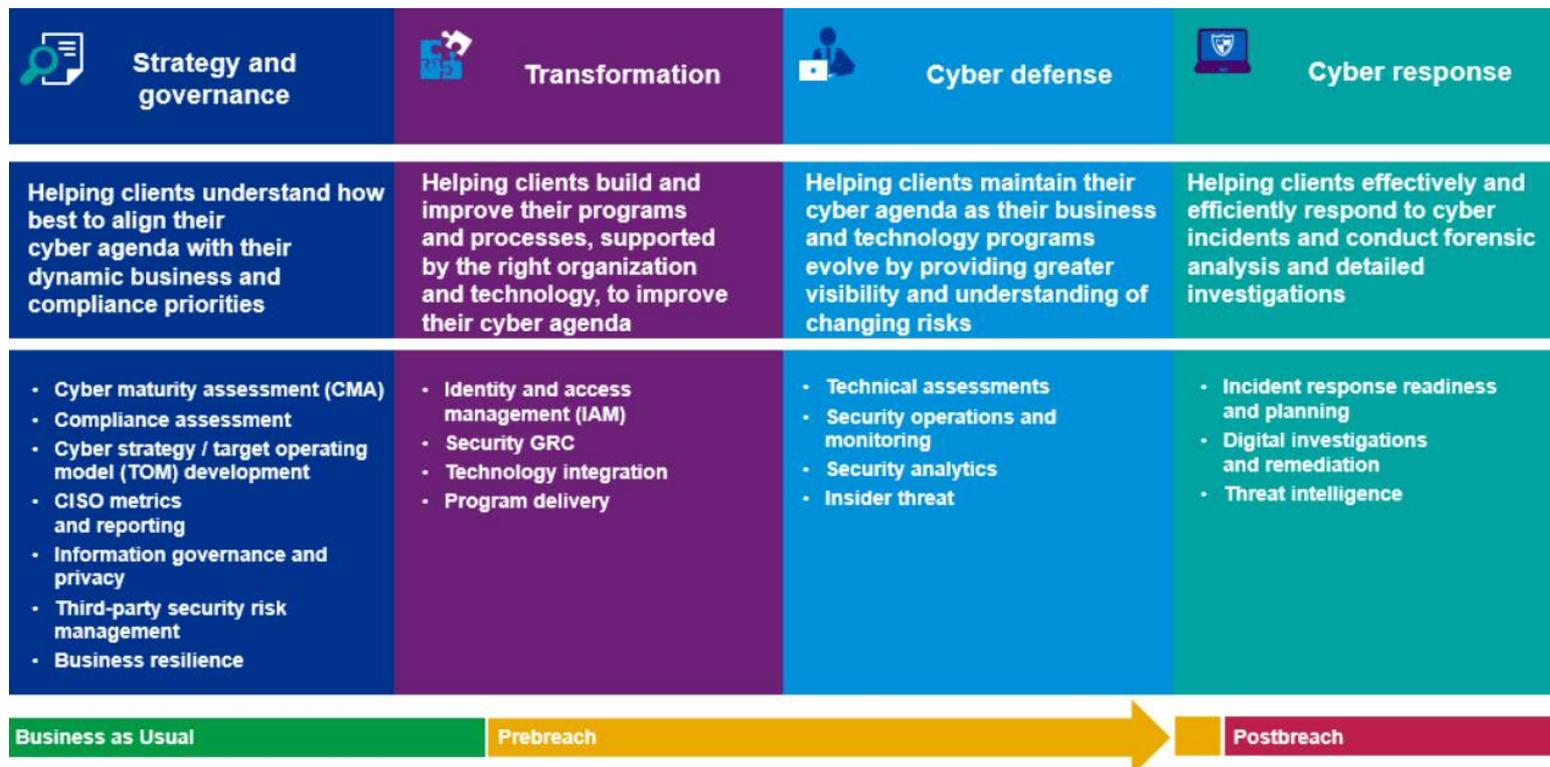
5. Speed of digitalization

Speed of digitalization is increasing to adapt to the new norm, and use of data analytics and risk quantification.

Our global capabilities

Four pillar approach

KPMG Cyber sees the world from the client's perspective, bringing a business context to cybersecurity for all levels of the organisation, from the boardroom to the back office. We help organisations in transforming their security function into business - enabling platforms so they can understand, prioritise, and manage their cybersecurity risks, take control of uncertainty, increase agility, and convert risk into advantage. Our four pillars are shown below.

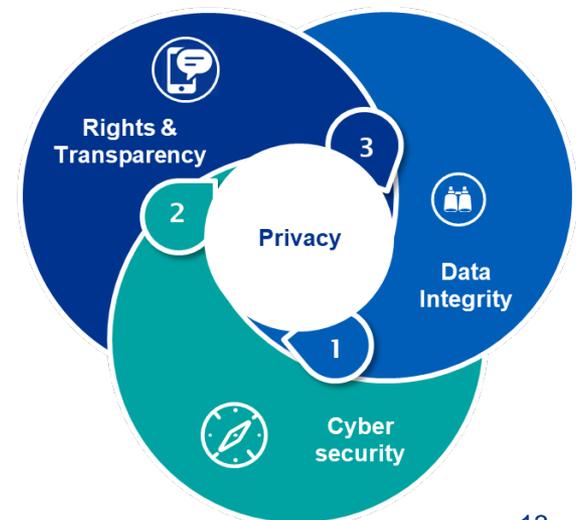


PIPA and privacy

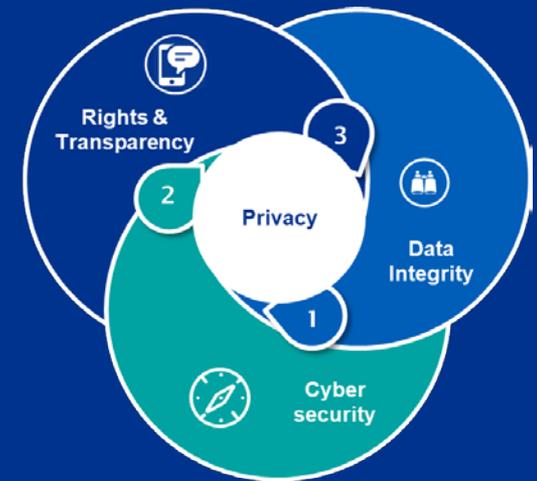
All residents of Bermuda now enjoy the right to informational privacy, or the right to protect their personal information. Many countries recognize this as an important human right and have developed laws to protect individuals' personal information. Bermuda has enshrined such rights with the passage of the Personal Information Protection Act (PIPA), which received Royal Assent on July 27, 2016, Ministerial statement and Personal Information Protection Act 2016.

The PIPA outlines the requirements for organisations that use personal information, as well as the rights that individuals have regarding the use of their personal information by organisations. This legislation, which follows international best practice, applies to all organisations, businesses and the government that use personal information in Bermuda. While organisations require the use of personal information to provide services, it is important that individuals have control over their information and how it is used and shared. Privacy legislation is also critical in the digital age. It plays a major role in the development of a country's cybersecurity framework and is a key driver for a successful digital economy.

Effective date – TBD



PIPA and privacy



11 Key PIPA Recommendations

1. Consider the impact of PIPA
2. Prepare a record of processing activities
3. Establish conditions for using personal information
4. Consider management of sensitive personal information & children's data
5. Review the transfer of personal information to an overseas third party
6. Review and update privacy notices and management of consent
7. Establish periodic review in regard to purpose limitation, proportionality, & integrity
8. Create security safeguards protecting personal information
9. Understand and adhere to the rights of individuals
10. Establish breach of security notification procedures
11. Determine policies for privacy by design and privacy impact assessment



Internal audit, risk & compliance services

**Our services
Governance through COVID-19**





Introducing the presenter



Ian Gardner
Director,
Internal audit,
risk & compliance services

Our services

Our skills, experience and credentials
lend themselves to a wide range of assurance
and advisory services

Core assurance
(value preservation)

Service suite

Consultancy
(value creation)



Governance: Boardroom challenges from COVID-19

The discussion topics

- ✓ People
- ✓ Technology
- ✓ BCM
- ✓ Risk management
- ✓ Future strategic challenges/ change
- ✓ Agility
- ✓ Resilience

The practicalities

- Delegation of authority
- 'Remote' governance' (Board, AGM)
- Board meeting frequency/ duration
- Board 'match fitness' for change
- Board/ executive key person dependency/ succession

Which Board will fare best?

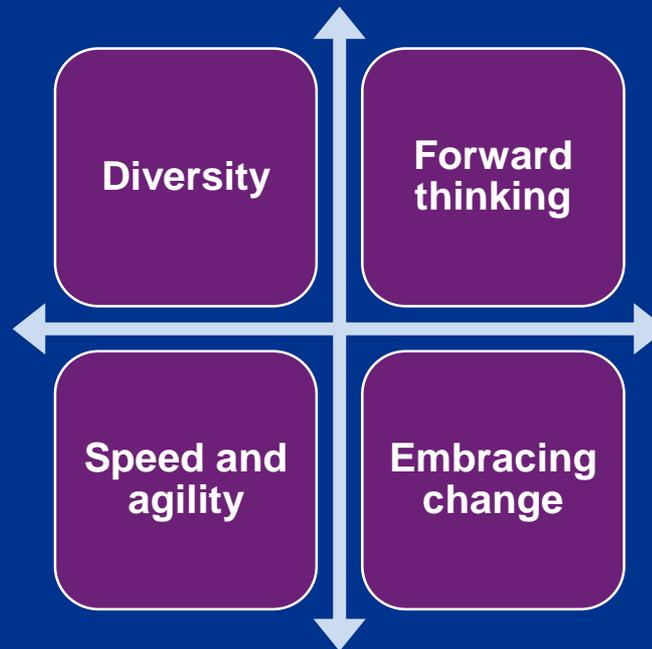
Boards that are:

Well-prepared

Adaptable

Agile

Dynamics of a successful Board through COVID:





Highlights of economic substance





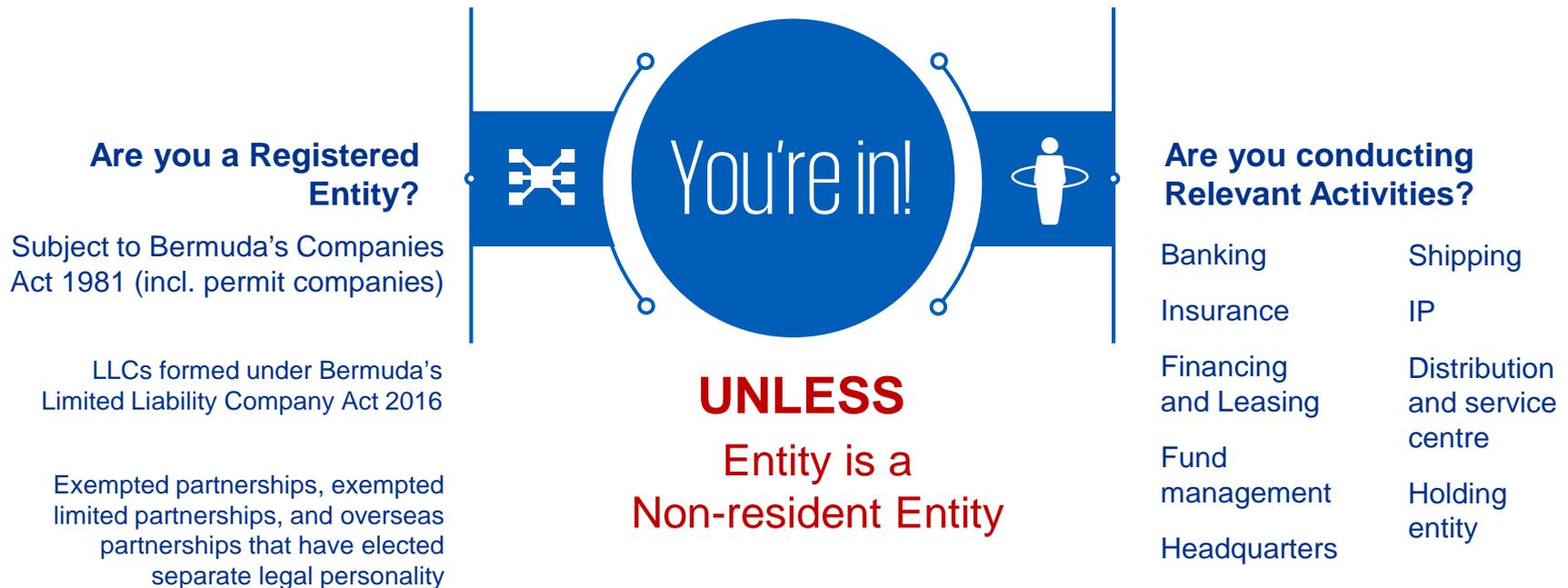
Introducing the presenter



Will McCallum
Managing Director,
Head of Tax

Who's in scope?

The Economic Substance Act 2018 and the Economic Substance Regulations 2018 (together, “ESA”) require specific types of entities that carry on Relevant Activity to satisfy economic substance requirements.



Relevant activities

An entity is required to meet the economic substance requirements in to the extent it is engaged in any of the following Relevant Activities.

The term “Relevant Activity” means carrying on as a business any one or more of the following:



The Registrar will consider that the above activities are being carried on as a business where the entity earns any gross income in respect of such activity during the relevant financial period.



The economic substance requirements

Entities that are subject to the ESA are required to maintain a substantial economic presence in Bermuda, and in that regard must meet the economic substance requirements. A legal entity that carries on more than one relevant activity will be required to comply with the economic substance requirements in respect of each activity.



Managed and Directed in Bermuda



Core-income generating activities conducted in Bermuda

Adequate number of suitably qualified “employees”



Adequate operating expenditure



Adequate physical presence



What if I'm tax resident elsewhere?

The economic substance provisions in many jurisdictions (e.g., Cayman Islands, BVI, Crown Dependencies) provide that an entity which is tax resident outside of the jurisdiction is not subject to local substance requirements.

The ESA was amended **on 28 June 2019** to provide for this exception in Bermuda. According to the Guidance Notes 12.1:

“The Registrar will regard an entity as being resident for tax purposes in a jurisdiction outside of Bermuda if all of its income from Relevant Activities is liable to tax in that jurisdiction. This may include an entity all of whose income from Relevant Activities is taxed on a branch or agency basis in a jurisdiction outside Bermuda.”

Provisions in the jurisdictions vary significantly:

- Minimum foreign tax rate (Crown Dependencies)
- Not resident in blacklisted jurisdiction (BVI and Bermuda)
- Treatment of branches (Cayman)
- AEOI (all?)

Companies will need to support the claim of tax residency elsewhere by such evidence (e.g. assessment to tax, certificate of tax residence) as is required by the legislation.



Outsourcing arrangements

The regulations require an entity to provide information related to the nature and extent of outsourcing arrangements, including as to whether:

- employees of the outsourcing entity monitor and control the outsourcing arrangement, and are suitably qualified to do so
- the affiliate or outsourced service provider:
 - has adequate capacity and suitably qualified employees
 - complies with the economic substance requirements that apply to the outsourcing entity (e.g. core income generating activities conducted in Bermuda, adequate employees, premises, and expenditure in the jurisdiction)
 - The regulations specify that employees, expenditure and premises of the affiliate or outsourced service provider **must not be counted multiple times** by multiple entities when evidencing their compliance with the economic substance requirements



U.S. Tax updates

- **U.S. Tax Reform and continued regulatory developments**
- **Substantial IRS enhancements to U.S. investor reporting (e.g. Schedule K-1, Form 5471)**
- **Active insurance company PFIC exception**
- **BEPS Pillar 2 and proposed carve out for investment funds**





Questions?





Thank you



Contacts



Will McCallum
Managing Director,
Head of Tax

willmccallum@kpmg.bm



Ian Gardner
Director, IARCS

iangardner@kpmg.bm



Rosalyn Tiamzon
Senior Manager,
Audit

rosalyntiamzon@kpmg.bm



Maria Lingham
Senior Manager,
Regulatory Compliance

rohitrao@kpmg.bm



Max Graupner
Manager,
IT Advisory

maximiliangraupner@kpmg.bm

kpmg.bm

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

2020 KPMG, a group of Bermuda limited liability companies which are member firms of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.